No. 95-704

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

AKHTAR HAMID, SHRICHAND CHAWLA, SOHA, INC., IDRISS DEVCO, INC., S&L GENTRADE, INC., LEO D. CURRAN, NIAM MUSLEH, WILLY HERMANS, RED CIRCLE INVESTMENTS, LTD., SADIK MAHMOUD HASHIM, NUHA HUSSAIN MUBAREK, JALEH KHORASSANCHY, PHILIP MERZ and AMIT PANDYA, On Behalf Of Themselves and All Others Similarly Situated,

Petitioners,

v.

PRICE WATERHOUSE, PRICE WATERHOUSE/U.K., PRICE WATERHOUSE WORLD FIRM, LTD., PRICE WATERHOUSE/U.S., ERNST & YOUNG, ABU DHABI, EMIRATE OF ABU DHABI, ABU DHABI INVESTMENT AUTHORITY, BANK OF AMERICA CORPORATION, BANKAMERICA CORP., BANK OF AMERICA NT&SA, HILL & KNOWLTON, GRP INVESTMENTS, INTERREDEC, INC., INTERREDEC SOUTHERN CO., FIRST AMERICAN CORP., FIRST AMERICAN BANKSHARES, PAUL ADAMS, JACK BEDDOW, A. VINCENT SCOFFONE, T. BERTRAM LANCE, INDEPENDENCE BANK, MANUEL NORIEGA, FULVIO DOBRICH, ROBERT ALTMAN, CLARK CLIFFORD and CLIFFORD & WARNKE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE COURT APPOINTED FIDUCIARIES OF BCCI, AS AMICUS CURIAE, IN SUPPORT OF RESPONDENTS

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In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-704

AKHTAR HAMID, SHRICHAND CHAWLA, *et al.*,
Petitioners,

v.

PRICE WATERHOUSE, PRICE WATERHOUSE/U.K., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE COURT APPOINTED FIDUCIARIES OF BCCI, AS AMICUS CURIAE, IN SUPPORT OF RESPONDENTS

The Court Appointed Fiduciaries of BCCI Holdings (Luxembourg), S.A. ("BCCI Holdings"), Bank of Credit and Commerce International, S.A. ("BCCI SA"), Bank of Credit and Commerce International (Overseas) Limited ("BCCI Overseas"), and International Credit and Investment Company (Overseas) Limited ("ICIC Overseas") (collectively referred to, for the purposes of this brief, as the "BCCI Group") hereby submit this brief as amicus curiae in support of respondents and in opposition to petitioners' request for a writ of certiorari. All parties to

this proceeding have consented to the filing of an amicus brief by the Court Appointed Fiduciaries.

INTEREST OF AMICUS CURIAE

The Court Appointed Fiduciaries are the liquidators of BCCI Holdings, BCCI SA, BCCI Overseas, ICIC Overseas and are charged by their appointing courts in Luxembourg, the Cayman Islands and the United Kingdom with responsibility for the collection of the BCCI Group's global assets and distribution of those assets to creditors and depositors worldwide. Pursuant to their appointments, the Court Appointed Fiduciaries have undertaken numerous responsibilities on behalf of the BCCI Group and their creditors and depositors, including:

1) Negotiation of a comprehensive Plea Agreement on behalf of the BCCI Group with United States prosecutors and regulators, the District Attorney of New York County, and state regulators;

2) Initiating and resolving claims against persons responsible for damage to the BCCI Group;

3) Litigation in United States courts concerning matters arising out of the Plea Agreement and resulting forfeiture; and

4) Defending the BCCI Group against actions filed by third parties.

The Court Appointed Fiduciaries file this amicus brief because petitioners' litigation in the United States threatens the orderly process by which the BCCI Group is being liquidated in Luxembourg, the Cayman Islands and the United Kingdom. That litigation has delayed the Court Appointed Fiduciaries' realization of millions of dollars of BCCI Group assets for distribution to creditors and depositors worldwide. In addition, petitioners, through this action, have sought to undermine the existing liquidations and the authority of the Court Appointed Fiduciaries

to pursue wrongdoers who have damaged the BCCI Group, for the collective benefit of all of the BCCI Group's creditors and depositors.

SUMMARY OF ARGUMENT

The Court Appointed Fiduciaries urge this Court to deny the petition for writ of certiorari because the courts below correctly found that the prolonged litigation of petitioners' claims interferes with the orderly liquidation of the BCCI Group by its duly appointed fiduciaries. The interposition of this action has frustrated the remission of funds from the United States for the benefit of creditors and depositors. Further, under the doctrine of comity as announced by this Court, denial of the petition would accord proper deference to the foreign liquidation proceedings. Those proceedings provide an appropriate and convenient forum for all BCCI Group creditors and depositors, including petitioners.

FACTUAL BACKGROUND

A. Liquidation Of The BCCI Group

Until July 1991, the BCCI Group was a worldwide banking organization, operating in sixty-nine countries. The parent company, BCCI Holdings, was a Luxembourg holding company which owned two principal operating subsidiaries, BCCI SA and BCCI Overseas. ICIC Overseas was a related corporation, whose affairs were controlled by the corrupt senior management of the BCCI Group.

On July 5, 1991, bank regulators in Luxembourg, the Cayman Islands, the United Kingdom, the United States and elsewhere shut down the worldwide operations of the BCCI Group. Shortly thereafter, the District Court in Luxembourg, where BCCI Holdings and BCCI SA were incorporated, the Grand Court of the Cayman Islands,

where BCCI Overseas and ICIC Overseas were incorporated, and the High Court of Justice in England, where BCCI SA had its major banking operations, appointed fiduciaries to oversee the global liquidations of BCCI. Since their appointments, the Court Appointed Fiduciaries have been working together to preserve and collect all of the assets of the BCCI Group worldwide, in order to distribute those assets ratably to innocent creditors and depositors of the BCCI Group around the world.

B. The Plea Agreement

As part of their efforts to preserve and collect the BCCI Group's assets for the benefit of creditors and depositors, in December 1991, the Court Appointed Fiduciaries negotiated a comprehensive Plea Agreement with the Department of Justice, the District Attorney of New York County, the Federal Reserve and numerous other state and federal agencies. Amicus Appendix (hereinafter "Am. App.") at 1a-29a. Through the Plea Agreement, which was approved by the United States District Court for the District of Columbia, the Department of Justice and other governmental entities recognized the Court Appointed Fiduciaries as the sole, authorized representatives of the creditors and depositors of the BCCI Group.

The Plea Agreement required the BCCI corporations, through the Court Appointed Fiduciaries, to plead guilty to federal and state criminal charges and to agree not to contest charges filed by the Federal Reserve. Am. App. at 6a-8a, 19a. It further provided that the United States District Court for the District of Columbia would enter an order pursuant to 18 U.S.C. § 1963(a) forfeiting all of the BCCI Group's assets located in the United States. The United States Department of Justice agreed that, following completion of claims proceedings pursuant to 18 U.S.C. § 1963(*l*), one-half of the forfeited assets would be transferred to the Worldwide Victims and Creditors Compensation Fund (hereinafter "the Worldwide

Victims Fund") to be administered by the Court Appointed Fiduciaries. The remaining half would be used at the discretion of the Attorney General for various enumerated purposes, including "restitution to victims of BCCI, which may include remission to the Court Appointed Fiduciaries . . . for the purpose of facilitating an increase in assets available for distribution by the Court Appointed Fiduciaries to innocent worldwide victims of BCCI." Am. App. at 13a.

C. The Sale Of First American

Among the charges to which the BCCI Group agreed to plead guilty was the illegal, indirect ownership of First American Bankshares, Inc. (hereinafter "FAB"), a Washington D.C.-based bank holding company and one of the respondents herein.[1] As part of the Plea Agreement, the Court Appointed Fiduciaries agreed to comply with existing divestiture orders and to cause the BCCI Group to divest itself of any interest it had in First American. Am. App. at 19a.

On January 24, 1992, the United States District Court for the District of Columbia "condemned and forfeited to the United States" property of the BCCI Group in the United States, including, "the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in First American Bankshares, Inc., but not the stock, security or other interest itself." Am. App. at 31a. On June 23, 1992, the court appointed a Trustee to hold the stock of FAB's corporate parent, First American Corporation (hereinafter "FAC"), and to "sell or otherwise dispose of [the FAC] shares or cause the boards of directors of FAC and FAB to sell

---

[1] First American Bankshares, with its parent corporations First American Corporation, Credit and Commerce American Investments, B.V., and Credit and Commerce American Holdings, N.V., will be referred to herein collectively as "First American." FAB's corporate parent, First American Corporation ("FAC"), is also a respondent in this action.

or otherwise dispose of all assets owned or controlled directly or indirectly by FAC." Am. App. at 42a. The Trustee and the FAC Board of Directors subsequently sold the assets of FAB for approximately $460 million. Am. App. 50a.

Of the total value of First American, approximately 61% is attributable to the BCCI Group's ownership and is forfeitable pursuant to the Plea Agreement. Am. App. at 66a. In addition, the Court Appointed Fiduciaries are entitled to distribution of approximately 37% of First American's value pursuant to an assignment of share proceeds by the Government and Ruler of Abu Dhabi, United Arab Emirates, and certain additional assignments.

ARGUMENT

I. THE NINTH CIRCUIT WAS CORRECT WHEN IT HELD THAT THE LITIGATION OF PETITIONERS' CLAIMS IS INTERFERING WITH THE ORDERLY, EQUITABLE LIQUIDATION OF THE BCCI GROUP

The Ninth Circuit held that to permit petitioners' litigation, in light of the existing liquidation proceedings, would lead to "double counting of damages and would interfere with an equitable liquidations process." Petitioners' Appendix (hereinafter "Pet. App.") at A-20. That court stated further:

> The appellants in this case have claims similar to those of many other potential claimants. Their claims, if allowed in this lawsuit, would enable them to jump ahead of other creditors in priority and obtain greater shares of the failed bank's assets and of the assets of any wrongdoers who may owe money to the failed bank on account of their wrongs.

Id. As set forth below, the Ninth Circuit correctly found that the instant action impedes the global liquidation of the BCCI Group; accordingly, it was properly dismissed.

A. This Litigation Is Delaying Payment To Thousands Of BCCI Creditors Worldwide

On June 6, 1994, the First American Trustee notified the District Court for the District of Columbia of completion of the sale of First American assets. Am. App. at 47a-48a. On December 21, 1994, that court entered a procedural order setting forth procedures for completion of the liquidation of assets and resolution of claims against First American, so the proceeds of the First American sale could be distributed according to the Plea Agreement and other applicable agreements. Am. App. at 49a-64a.

Pursuant to the procedural order, the Boards of Directors of FAB and FAC have set reserves against asserted claims, including petitioners' claims. Am. App. at 55a-58a. Because petitioners' purported claims exceed the total value of First American's assets, the need to maintain a reserve with respect to petitioners' claims precludes the payment of any First American proceeds to the forfeiture fund or the Worldwide Victims Fund. Am. App. at 57a. Consequently, petitioners' obstinacy in pressing their claims is interfering with the liquidation proceedings at their most basic level—the claims are blocking hundreds of millions of dollars from remission to the Worldwide Victims Fund, which funds could then be distributed to depositors and creditors participating in the liquidation proceedings, including some of the petitioners before this Court.

B. The Liquidators Have Brought Actions Against And/Or Have Entered Settlements With The Same Defendants For The Same Losses

Contrary to the arguments made by petitioners, the district court below held expressly that the BCCI Group was the victim of wrongdoers' conduct in this instance. Pet. App. at A-44. The injuries asserted by petitioners are identical to the injuries of every other depositor and credi-

tor of the BCCI Group: they were induced to provide credit to a banking corporation which was being victimized by wrongdoers and fraudsters, and their money has been squandered.[2] As the courts below properly held, claims common to all creditors belong to the corporation generally, and in this case to the Court Appointed Fiduciaries. *In re Sunrise Sec. Litig.*, 916 F.2d 874, 886-89 (3d Cir. 1990); *Downriver Com. Fed. Credit Union v. Penn Square Bank*, 879 F.2d 754, 764 (10th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990). *Cf. Davis v. Elmira Sav. Bank*, 161 U.S. 275, 289-90 (1896); *United States ex rel. White v. Knox*, 111 U.S. 784, 786 (1884) (federal banking statutes and policy favor ratable distribution to all depositors). To hold otherwise would create a race to the courthouse by certain well-funded depositors, who could recover from wrongdoers at the expense of the liquidation estate and/or other less sophisticated victims.

In this instance, the District Court and the Ninth Circuit correctly held that the Court Appointed Fiduciaries are the appropriate persons to bring suit on behalf of the BCCI Group and their innocent creditors and depositors. Pet. App. at A-20 thorugh A-21; A-43 through A-44. To the extent they have evidence of wrongdoing, and consistent with overall liquidation strategy, the Court Appointed Fiduciaries have brought civil actions for damages against many of the same parties sued by petitioners here.

For example, beginning in 1992, the Court Appointed Fiduciaries have brought a series of actions in England against the BCCI Group's auditors, respondents Price Waterhouse and Ernst & Whinney, for negligence and breach of contract in relation to their audits of the BCCI Group. *Bank of Credit and Commerce International*

[2] In filing their complaint as a purported class action on behalf of themselves and "all others similarly situated," petitioners concede that their injuries are identical to those of all other depositors.

(Overseas) Limited [*In Liquidation*] *and Ors v. Price Waterhouse and Ors*, CH1992 B No. 2754, CH1992 B No. 2590, CH1992 B No. 2591, CH1993 B No. 1509, CH1993 B No. 1512 (consolidated actions concerning audits 1985-1987); *Bank of Credit and Commerce International (Overseas) Limited* [*In Liquidation*] *and Ors v. Price Waterhouse and Ors*, CH1994 B No. 1888 (concerning the 1988 audits); *Bank of Credit and Commerce International (Overseas) Limited* [*In Liquidation*] *and Ors v. Price Waterhouse and Ors*, CH1995 B No. 2351 (concerning the 1989 audits). These actions remain pending, and the parties are currently engaged in active discovery.

Similarly, the Court Appointed Fiduciaries have sued Ghaith Pharaon, the ultimate owner of respondents GRP Investments, Interredec, Inc., and Interredec Southern Co., for fraud, breach of contract, RICO violations and other wrongdoing. *BCCI Holdings (Luxembourg) S.A. v. Pharaon*, Civil Action No. 94-3058 (SHS) (S.D.N.Y.). That suit is pending and is in active discovery. The Court Appointed Fiduciaries have also filed and are pursuing an action alleging negligence, breach of fiduciary duty, RICO violations and other wrongdoing by respondents Clark Clifford, Robert Altman and the partners of Clifford and Warnke. *BCCI Holdings (Luxembourg) S.A. v. Clifford*, Civil Action No. 94-1461 (JHG) (D.D.C.).

Finally, the Court Appointed Fiduciaries have reached a settlement with the Government of Abu Dhabi, United Arab Emirates (a respondent here), and its Ruling Family. This settlement has been approved by the High Court of Justice in England, the Grand Court of the Cayman Islands, and the District Court in Luxembourg; it is currently pending before the Luxembourg Court d'Appel. If approved, the settlement agreed by the Court Appointed Fiduciaries and representatives of the government of Abu Dhabi and the Abu Dhabi Ruling Family will inject $1.8 billion into the pool of funds to be distributed to worldwide creditors and depositors.

By bringing these actions, and in appropriate cases by negotiating settlements, the Court Appointed Fiduciaries seek to recover on behalf of *all* creditors and depositors for the same injuries that petitioners claim. Petitioners' attempt to gain an advantage over other creditors through this proceeding is evident in their petition. Petitioners' attempt to justify their litigation by stating that unless their claims are permitted to go forward, their only remedy will be "whatever pittance they receive from some insolvency proceeding conducted in a foreign land . . . ." Pet. at 17. This justification was expressly rejected by the Third Circuit in an analogous case. The Third Circuit reasoned:

> permitting plaintiffs to sue directly for claims emanating from injury to the institutions would circumvent the priority scheme by enabling depositors to recover the institutions' assets in advance of other general creditors and claimants with superior interests, such as secured creditors. This result . . . is both inequitable and inefficient, and threatens to further complicate the immense task of liquidating the institutions' assets.

In re Sunrise Sec. Litig., 916 F.2d 874, 889 (3d Cir. 1990).

II. INTERNATIONAL COMITY SUPPORTS DISMISSAL OF THIS ACTION

The Court Appointed Fiduciaries submit that considerations of comity further support dismissal of petitioners' claims, because they interfere with the orderly, equitable liquidation of the BCCI Group. This Court has defined comity as:

> the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 164 (1895).

The Court Appointed Fiduciaries are the duly appointed representatives of foreign liquidation estates. They operate under court supervision and are managing coordinated, transnational liquidation proceedings for the purpose of assuring an orderly, equitable process in which all creditors and depositors will share, *pari passu*, in the assets of the BCCI Group. Petitioners purport to be a class of all BCCI Group depositors and creditors, though no class was ever certified. Petitioners therefore purport to represent the same depositors and creditors as the Court Appointed Fiduciaries, mounting a direct challenge to the Court Appointed Fiduciaries' authority to act on behalf of all creditors and depositors in the interest of the common good.

This Court and other United States courts have traditionally accorded comity to international liquidation proceedings. *Canada Southern Ry. Co. v. Gebhard*, 109 U.S. 527, 537-39 (1883); *Victrix S.S. Co., S.A. v. Salen Dry Cargo, A.B.*, 825 F.2d 709, 713-15 (2d Cir. 1987) (ordered discovery regarding whether to give comity); *Cunard S.S. Co. v. Salen Reefer Servs., A.B.*, 773 F.2d 452, 458 (2d Cir. 1985); *In re Colorado Corp. (IIT v. Lam)*, 531 F.2d 463, 468-69 (10th Cir. 1976); *Pravin Banker Assocs., Ltd. v. Banco Popular del Peru*, 165 B.R. 379 (S.D.N.Y. 1994); *Lindner Fund, Inc. v. Polly Peck Int'l PLC*, 143 B.R. 807, 810 (S.D.N.Y. 1992); *Allstate Life Ins. Co. v. Lintner Group, Ltd.*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 968,64 at 93,518-20, 1992 WL 136849 at *6-8 (S.D.N.Y. June 1, 1992), *aff'd*, 994 F.2d 996 (2d Cir.), *cert. denied*, 114 S. Ct. 386 (1993).

In *Canada Southern*, this Court's seminal case on according comity to a foreign bankruptcy proceeding, this Court held that New York bondholders of a Canadian railway could not press an action against the railway in the United States, because the action would conflict with the railway's plan of reorganization in Canada. The Court noted that it is reasonable in the insolvency context

to require "each individual to so conduct himself for the general good as not unnecessarily to injury another," 109 U.S. at 536. Citing the need for comity in international insolvency proceedings, the Court dismissed the actions brought by the New York bondholders. *Id.* at 539-40.

Comity is the rule and not the exception. Comity toward foreign proceedings should be granted unless "contrary or prejudicial to the interest of the nation called upon to give it effect." *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972). The granting of comity to the BCCI Group liquidation proceedings, through denial of certiorari here, would not be contrary to the interests or public policy of the United States. The public policy of this country clearly favors the consolidated consideration of claims in the insolvency context. *See Cunard S.S. Co. v. Salen Reefer Servs., A.B.*, 773 F.2d 452, 459 (2d Cir. 1985); *IIT v. Cornfeld*, 462 F. Supp. 209, 217 (S.D.N.Y. 1978), *aff'd in relevant part*, 619 F.2d 909 (2d Cir. 1980); *Allstate Life Ins. Co. v. Lintner Group, Ltd.*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 968,64 at 93,520, 1992 WL 136849 at *9.

In this case, through the mechanism of a class action, petitioners seek to supplant the decision-making of the Court Appointed Fiduciaries with their own. If viewed as a class action, petitioners' litigation is an attempt to usurp the authority of the Court Appointed Fiduciaries and to establish a U.S.-based, mini-liquidation supervised by petitioners' counsel and U.S. courts. As such, it is in direct conflict with the global liquidation proceedings being administered by the Court Appointed Fiduciaries. If not viewed as a class action, petitioners' litigation in the United States is an attempt by a small group of depositors to recover for themselves funds which more appropriately belong to the corporate estate for the benefit of all creditors and depositors. *See In re Sunrise Sec. Litig.*, 916 F.2d 874, 889. Under either view, petitioners' efforts are a substantial interference with the BCCI Group's orderly, equi-

table liquidation proceedings; comity requires deference to the global liquidation proceedings, and deference requires that petitioners' challenge to the liquidation proceedings be rejected by this Court.

III. IT IS NOT INCONVENIENT FOR THE PETITIONERS TO PARTICIPATE IN THE LIQUIDATION PROCEEDINGS ABROAD

Petitioners' argument that they should be permitted to litigate their claims in the United States because they cannot participate conveniently in the liquidation proceedings abroad is without basis and should be rejected by this Court. Of the fourteen petitioners before this Court, only three—Soha Inc., Idriss Devco, Inc., and S&L Gentrade, Inc.—had deposits in the United States. All other petitioners made their deposits in BCCI branches and/or subsidiaries in England, Hong Kong, Luxembourg, Abu Dhabi, Grand Cayman, and France. Having found it convenient to make their *deposits* abroad, petitioners should not be heard to argue that it would be inconvenient for them to make their *claims* abroad.[8]

Insofar as petitioners had deposits in the United States, there were U.S. liquidation proceedings in which they could recover their funds. Following the regulatory seizure of the BCCI Group, BCCI SA's New York Agency and Los Angeles Agency were both placed under the control of state banking authorities. State authorities in New York and California administered a comprehensive claim proceeding for depositors of the U.S. Agencies. Pet. App. at A-51 n.37; Am. App. at 3a, 10a. The accepted claims of depositors of BCCI SA's U.S. agencies were paid *in full* by the state banking authorities. See Pet. App. at A-51 n.37; Pet. App. at A-57 through A-58 & n.43.

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[8] Moreover, the filing of a claim in the liquidation proceedings is not difficult. Claim forms are available upon request from the Court Appointed Fiduciaries. Claim forms are printed in English, may be completed in English and may be submitted by mail to the appropriate liquidation jurisdiction.

Soha, Inc., S&L Gentrade Inc., and Idriss Devco, Inc., the three petitioners who claim deposits in the United States, did not inform this Court in the Petition that they have *already* participated in a local liquidation proceeding in California. Each of these petitioners filed claims in the liquidation of the Los Angeles Agency of BCCI SA, and each claim was rejected because the petitioner's deposit was set-off by the California state liquidator against an existing liability. Because those existing liabilities have been reduced by the amount each petitioner had on deposit, these petitioners have already received full credit for their purported deposits.

CONCLUSION

For the above-stated reasons, the Court Appointed Fiduciaries respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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Dated: December 1, 1995

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APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Crim No. 91-0655

UNITED STATES OF AMERICA

-v-

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED,

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
CRIMINAL TERM

Ind 8090/91

PEOPLE OF THE STATE OF NEW YORK

-v-

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *et al.*,

Defendants.

PLEA AGREEMENT

Parties and Purpose

WHEREAS, the United States of America, by its attorneys for the United States Department of Justice (the "DOJ"), the People of the State of New York, by the District Attorney for New York County, Robert M. Morgenthau (the "DANY") and Brian Smouha, Jacques Delvaux and Constant Franssens, as Commissairies of BCCI Holdings (Luxembourg) S.A. ("BCCI Holdings"); Brian Smouha, as Commissaire of Bank of Credit and Commerce International, S.A. ("BCCI SA"); Ian Wight and Robert Axford, as Joint Provisional Liquidators of Bank of Credit and Commerce International (Overseas) Ltd. ("BCCI Overseas"); and Ian Wight and Robert Axford as Joint Provisional Liquidators for International Credit and Investment Company (Overseas) Limited ("ICIC") (all such persons acting in the capacities so indicated or their duly appointed successors, being hereinafter collectively referred to herein as the "Court Appointed Fiduciaries"), have engaged in discussions with respect to the subject matter hereof pursuant to Rule 11 of the United States Federal Rules of Criminal Procedure, and, with respect to DANY, under New York law;

WHEREAS, the DOJ and the DANY have pursued investigations into the business and affairs of BCCI Holdings, BCCI SA, BCCI Overseas and ICIC (collectively, "BCCI"), which investigations have developed, for the benefit of law enforcement and regulatory agencies, significant evidence of criminal activity by the prior management of BCCI and both the DOJ and the DANY continue to pursue investigations into the impact of that activity;

WHEREAS, prior to July 5, 1991, BCCI had been a worldwide banking organization with operations in approximately 69 countries and on July 5, 1991 BCCI was closed by bank regulatory authorities in the United King-

dom, the United States, the Cayman Islands, Luxembourg and elsewhere;

WHEREAS, BCCI is presently insolvent, and is subject to insolvency or liquidation proceedings pursuant to the laws of Luxembourg and the Cayman Islands and, in the case of certain agencies and branches of BCCI SA, are awaiting liquidation or in the process of being liquidated in the States of California and New York, and elsewhere;

WHEREAS, the failure of BCCI is likely to cause thousands of innocent depositors and other creditors throughout the world to suffer losses in the aggregate in billions of dollars;

WHEREAS, in order to address the foregoing, the Court Appointed Fiduciaries have been appointed to act as joint provisional liquidators and/or commissaires by courts in the respective domiciles of the BCCI companies to collect all BCCI assets located throughout the world, and liquidate the same for the purpose of achieving the greatest possible distribution to all lawful creditors and depositors of BCCI on a worldwide basis;

WHEREAS, in furtherance of the Court Appointed Fiduciaries' efforts, the Court Appointed Fiduciaries have filed a petition in Bankruptcy Court in the Southern District of New York under Title 11, Section 304 of the Bankruptcy Code seeking the turnover of all BCCI assets in the United States to the Court Appointed Fiduciaries (the "Section 304 Proceeding") and a Temporary Restraining Order has been issued in connection therewith;

WHEREAS, former management and operators of BCCI fraudulently and secretly acquired (1) direct or indirect ownership and control over the shares of First American Bankshares Inc., Washington, D.C. ("First American"), the former National Bank of Georgia, Atlanta, Georgia, and Independence Bank, Encino, Cali-

fornia ("Independence Bank"), and (2) an interest in the former CenTrust Savings Bank, Miami, Florida ("CenTrust");

WHEREAS, the DOJ and federal banking regulators intend to minimize the risk of potential loss to the Bank Insurance Fund and United States taxpayers by obtaining a fund which could provide additional capital to depository institutions and safeguard the Bank Insurance Fund, if either are necessary, in connection with BCCI's secret investment in U.S. financial institutions;

WHEREAS, it appears that the identifiable assets of BCCI in the United States, exclusive of any stock ownership in First American and Independence Bank, constitute approximately $550,000,000 in cash and other assets;

WHEREAS, the prior management and operators of BCCI are no longer involved in any effective decision-making capacity with BCCI, and its worldwide affairs are subject to the control of the Court Appointed Fiduciaries whom the DOJ, the DANY and the other parties hereto recognize, based upon various court appointments, as having full right and authority to act on behalf of BCCI and whom the DOJ and the DANY are willing to support in their efforts to collect and appropriately liquidate and distribute the assets of BCCI in an orderly and fair manner, consistent with the protection of innocent victims of BCCI and the due administration of justice;

WHEREAS, responsible authorities in the United States, the United Kingdom, the Cayman Islands and Luxembourg desire that the assets of BCCI be distributed by the Court Appointed Fiduciaries only in a manner which (a) protects United States taxpayers from potential losses to the banking organizations illegally acquired by BCCI, (b) provides prompt recovery to innocent depositors, creditors and other victims of BCCI, and (c) ensures, as set forth herein, that no monies are paid

to persons who have violated laws forbidding narcotics trafficking, terrorism, money laundering, crimes of violence or other acts generally recognized as felonies or similar crimes under the laws of the United States and other countries subscribing to recognized norms of international justice;

WHEREAS, pleas of guilty entered by the Court Appointed Fiduciaries, on behalf of BCCI, to substantial criminal charges in the United States will address significant U.S. law enforcement interests that the parties hereto believe, once the pleas provided for herein are entered and accepted by the relevant courts and all of the provisions of this Agreement are implemented as provided herein, will resolve all criminal investigations, charges, indictments and all criminal and civil proceedings against BCCI concerning matters occurring before July 5, 1991 subject to the terms and conditions set forth herein, thereby removing a major impediment and in fact facilitating the distribution of substantial BCCI assets to innocent depositors, creditors and other victims of BCCI;

WHEREAS, in addition to the DOJ and the DANY, responsible international law enforcement and regulatory authorities in the United Kingdom, the Cayman Islands and Luxembourg also desire a resolution which balances interests in obtaining an appropriate penalty for illegal corporate conduct and compensation of innocent depositors, creditors and other victims of BCCI;

WHEREAS, the entry of pleas of guilty by the Court Appointed Fiduciaries, on behalf of BCCI, to criminal charges in the United States District Court for the District of Columbia (the "U.S. District Court") and the Supreme Court of the State of New York (the "N.Y. Supreme Court") as provided herein is not intended by the parties hereto to preclude the criminal prosecution of or any civil action against any culpable BCCI officers, employees, agents or other entities (other than BCCI) or wrongdoers;

WHEREAS, the parties believe that the entry of pleas of guilty by the Court Appointed Fiduciaries, on behalf of BCCI, to criminal charges as provided herein will materially assist in the prosecution of culpable persons and entities (other than BCCI) by permitting DOJ, DANY, and other enforcement authorities to obtain greater access to documents and witnesses through the full cooperation and assistance of the Court Appointed Fiduciaries.

NOW, THEREFORE, the United States of America through the DOJ, the DANY, the Board of Governors of the Federal Reserve System (the "Board of Governors"), the Federal Deposit Insurance Corporation ("FDIC"), the Resolution Trust Corporation (the "RTC"), the Office of Thrift Supervision (the "OTS"), the Office of the Comptroller of the Currency (the "OCC"), the Securities and Exchange Commission ("SEC") the Superintendent of Banks of the State of New York ("N.Y. Banking"), the Superintendent of Banks of the State of California ("California Banking") and the Court Appointed Fiduciaries, with the assistance and support of the Serious Fraud Office of the United Kingdom (the "Serious Fraud Office"), the Public Prosecutor for Luxembourg, and the Attorney General of the Cayman Islands hereby covenant and agree as follows:

THE PLEAS

The Federal Plea

1. The Court Appointed Fiduciaries, acting on behalf of BCCI, will cause BCCI to waive venue and plead guilty in the U.S. District Court to the information, attached hereto as Exhibit A-1 (the "U.S. Information"), which charges BCCI with conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. Sections 1962(c) and (d).

2. The Court Appointed Fiduciaries fully understand the nature and elements of the crimes with which BCCI has been charged in the U.S. Information.

3. The Court Appointed Fiduciaries will cause BCCI to plead guilty because, to the best of their knowledge, they have determined after due inquiry that acts of prior management of BCCI establish that BCCI, as the entity responsible for the acts of such management, is in fact guilty of the charges contained in the U.S. Information and, in causing BCCI to plead guilty to the U.S. Information, the Court Appointed Fiduciaries, on behalf of BCCI, will accept the factual statements set forth in the U.S. Information and the conclusion of the DOJ that these statements provide a legally sufficient factual basis for the plea contemplated in paragraph 1 above.

The New York County Plea

4. The Court Appointed Fiduciaries, acting on behalf of BCCI, will cause BCCI to plead guilty in the N.Y. Supreme Court to counts one through six of New York County Indictment Number 8090/91 ("N.Y. Indictment") (Attached hereto as Exhibit A-2), it being expressly understood that the DANY will move to withdraw, as to BCCI only, at the time of the plea of guilty the second full paragraph of page 5 of said indictment, and the Court Appointed Fiduciaries will consent to that motion.

5. The Court Appointed Fiduciaries fully understand the nature and elements of the crimes with which BCCI has been charged in the N.Y. Indictment.

6. The Court Appointed Fiduciaries will cause BCCI to plead guilty because, to the best of their knowledge, they have determined after due inquiry that acts of prior management of BCCI establish that BCCI, as the entity responsible for the acts of such management, is in fact guilty of the crimes charged in counts one through six of the N.Y. Indictment as amended pursuant to paragraph 4 and, in causing BCCI to plead guilty to those crimes,

the Court Appointed Fiduciaries, on behalf of BCCI, accept that the factual statements set forth in counts one through six of the N.Y. Indictment provide a legally sufficient factual basis for the plea contemplated in paragraph 4 above.

7. The Court Appointed Fiduciaries, on behalf of BCCI, will join with the DANY's recommendation that, a fine of $10,000,000 under the New York Penal Law section 80.15 be imposed, jointly and severally, on the corporate entities defined above as BCCI, payable as provided in paragraph 12 below.

FORFEITURE AND DISGORGEMENT

8.(a) Upon execution of this Agreement by the parties, the Court Appointed Fiduciaries will cause $5,000,000 to be paid as an interim capitalization payment to Independence Bank (the "Interim Capitalization Payment") in exchange for newly issued shares of Independence Bank, which shares shall represent all the outstanding shares of Independence Bank. The shares to be issued pursuant to the Interim Capitalization Payment shall be issued in the name of one or more of the entities constituting BCCI herein and shall be subject to the divestiture Order of the Board of Governors of May 6, 1991 and placed in a trust to manage, control and sell Independence Bank, with an independent trustee to be selected by the Court Appointed Fiduciaries, which trust and trustee will be subject to the approval of the Board of Governors, California Banking, DOJ, and DANY, and subject to paragraph 9(b).

(b) Upon the filing of the U.S. Information, pursuant to 18 U.S.C. Section 1963(d)(1), the DOJ, on behalf of the United States, shall apply to the U.S. District Court with the consent of the Court Appointed Fiduciaries for an order directing that certain BCCI assets located in the United States, more fully described in Exhibit B, be paid

into a custodial account maintained by the Treasury Department in a segregated account within the Department of Justice Seized Asset Deposit Fund in the name of the U.S. District Court (the "Custodial Account"). As proceeds from paragraphs 9(b) through (e) becomes available, the DOJ, on behalf of the United States, shall apply to the U.S. District Court with the consent of the Court Appointed Fiduciaries for appropriate orders effectuating the transfer of proceeds to the Custodial Account for disbursement. During the term of this Agreement, funds in the Custodial Account shall draw interest, which interest will accrue to the Custodial Account. Upon entry of the Forfeiture Order as provided herein, the Custodial Account will be transferred from the Seized Asset Deposit Fund to the Department of Justice Assets Forfeiture Fund. Notice of any payments and transfers relating to the Custodial Account shall be made to the parties by the Treasury Department.

9. Upon entry of a judgment of conviction on the U.S. Information and an order of forfeiture issued pursuant to 18 U.S.C. Sections 1963(a)(1), (2) and (3) (the "Forfeiture Order"), BCCI shall forfeit to the United States the following property of BCCI located in the United States:

(a) all of BCCI's ownership interest in deposits and other assets originally held in those banks and brokerage firms identified on Exhibit B hereto and then paid into the Custodial Account under paragraph 8(b),

(b) the net proceeds from the sale or other disposition or transfer of any stock, security or other interest in Independence Bank, but not the stock, security or other interest itself,

(c) the net proceeds from the sale or other disposition or transfer of any stock, security or other

interest in First American, but not the stock, security or other interest itself,

(d) the balance of the liquidation estates of the Los Angeles and New York agencies of BCCI SA, but not the estates themselves, upon completion of liquidation proceedings conducted by the New York Banking and the California Banking in accordance with the laws of California and New York. For purposes of the foregoing, the "liquidation estates" shall consist of all of the rights and interests of the Superintendent of Banks of the states of New York and California under their respective state law banking statutes, with respect to the assets of BCCI SA located in their respective states and the assets of the New York and California agencies of BCCI SA. The liquidation estates do not include the assets enumerated in Exhibit B, and

(e) the entirety of BCCI's interests in all other property, not identified in clauses 9(a) through (d), located in the United States, including, without limitation, real property and all tangible and intangible personal property.

10. In furtherance of the ongoing liquidation activities of the New York Banking and the California Banking, the New York Banking and the California Banking will attempt to complete their respective liquidations as soon as practicable consistent with their respective statutes and the determinations of their respective courts. Thereafter, they will transfer to the Custodial Account the United States' forfeiture interest in the entire remainder of the liquidation estates, as quickly as reasonably possible.

11. As promptly as practicable after the entry of the Forfeiture Order and, to the extent possible, pending the completion of any proceedings that may be required under 18 U.S.C. Section 1963(*l*), disbursements shall be made from the Custodial Account to a U.S. Disgorge-

ment, Compensation and Penalty Fund maintained by the Treasury Department within the Department of Justice Assets Forfeiture Fund (the "U.S. Fund") and, subject to paragraphs 13, 14, and 17 below, to a Worldwide Victims and Creditors Compensation Fund maintained by the Court Appointed Fiduciaries (the "Worldwide Victims Fund") as follows:

(a) subject to clause (d) below, the first $100,000,000 deposited in the Custodial Account shall be disbursed to the U.S. Fund for the purposes set forth in paragraph 12;

(b) the next $100,000,000 deposited in the Custodial Account shall be disbursed to the Worldwide Victims Fund;

(c) subsequent deposits to the Custodial Account shall be concurrently disbursed in equal amounts to the U.S. Fund and the Worldwide Victims Fund, except that monies due to the U.S. Fund shall be paid without regard to delays, if any, under paragraph 13(a);

(d) prior to the disbursements described in clauses (a) through (c) of this paragraph 11, the Interim Capitalization Payment described in paragraph 8(a) shall be refunded to the Court Appointed Fiduciaries.

12. As determined in the sole discretion of the Attorney General of the United States (the "Attorney General"), the U.S. Fund shall be used for the following purposes:

(a) to minimize the risk of potential loss to the Bank Insurance Fund of the FDIC and United States taxpayers by providing additional capital, upon the request of the FDIC, OCC and the Board of Governors, to the subsidiary banks of First American, and Independence Bank, or to reimburse the Bank Insurance Fund for any losses it incurs in connection

with the sale or disposition of these institutions; *provided, however,* that when all said institutions are sold or otherwise disposed of an amount equal to any such capital infusion or insurance fund payment shall first be repaid to the U.S. Fund, with the balance of the net proceeds of the sale or disposition paid in equal amounts through the Custodial Account to the U.S. Fund and the Worldwide Victims Fund;

(b) within one week of the entry of the Order of Forfeiture, the Court Appointed Fiduciaries shall apply for remission, and the Attorney General will remit as soon as available $10,000,000 out of funds deposited in the U.S. Fund pursuant to paragraph 11(c) above for the sole purpose of paying the fine imposed or to be imposed upon BCCI in the N.Y. Supreme Court pursuant to paragraph 7 of this Agreement; it being understood and agreed that the distribution set forth under this paragraph shall take precedence over all other distributions from the U.S. Fund, obtained under paragraph 11(c), unless there is written consent otherwise of both the Attorney General and the DANY;

(c) to satisfy a punitive forfeiture in an amount to be determined in the sole and absolute discretion of the Attorney General;

(d) to compensate the DOJ for the reasonable costs of investigation and prosecution of BCCI and any former employees, officers or agents of BCCI, or other individuals who assisted its criminal activities;

(e) to compensate the DANY for the reasonable costs of its investigation and prosecution of BCCI and continued investigation of the activities of former employees, officers or agents of BCCI, should DANY make an application for equitable sharing;

(f) for restitution to victims of BCCI, which may include remission to the Court Appointed Fiduciaries in accordance with 18 U.S.C. Section 1963(g) for the purpose of facilitating an increase in assets available for distribution by the Court Appointed Fiduciaries to innocent worldwide victims of BCCI, and which may include claims related to the failure of CenTrust, if any;

(g) to reimburse the Board of Governors, FDIC, RTC, OTS, OCC, SEC for the reasonable costs of their investigations of, and civil and administrative proceedings against BCCI and related persons and entities;

(h) to take other appropriate measures as authorized pursuant to 18 U.S.C. Sections 1963(f) and (g).

The DOJ will notify DANY of disbursements from the U.S. Fund.

13. Disbursements to the Worldwide Victims Fund are conditioned on availability of funds under paragraph 11, establishment of a screening mechanism under paragraph 14, and, as provided in clause (a) below, the cooperation requirements of paragraphs 17 and clauses 21(c) and (e). The amounts payable to the Worldwide Victims Fund shall be paid every 15 days beginning as soon as practicable after entry of the Forfeiture Order in increments of $50,000,000 (or such lesser amounts as are available) until all funds are paid unless:

(a) DOJ or DANY have filed written notice with the Court Appointed Fiduciaries specifying the details of a violation of or a failure to comply with paragraph 17, or in the case of an alleged violation of or failure to comply with clauses (c) and (e) of paragraph 21, upon similar written notice filed by the DOJ with the Court Appointed Fiduciaries, in which case payments will be deferred until the par-

ties resolve any dispute over such cooperation. Any dispute not resolved by the parties within 10 days of such notification may be referred by any party to the District Court for resolution. Upon resolution of any objection under this section, transfers will resume promptly as provided above.

(b) During the pendency of any delay by virtue of objections under clause (a) above, interest which accrues on these funds held in the Custodial Account shall accrue to the benefit of the Worldwide Victims Fund and shall be payable at the same time as and together with the principal to which it relates.

14. Prior to the transfer of funds to the Worldwide Victims Fund pursuant to paragraph 13, the Court Appointed Fiduciaries shall have established an international screening mechanism acceptable to the DOJ and DANY that assures, consistent with the laws of the countries governing the distribution of the Worldwide Victims Fund by the Court Appointed Fiduciaries, that such funds will be distributed only to innocent depositors, creditors and other victims of BCCI whose claims are not derived directly or indirectly through violations of United States or other laws concerning narcotics, terrorism, money laundering, crimes of violence, or other acts generally recognized as felonies or similar crimes under the laws of countries subscribing to recognized norms of international justice. The screening mechanism shall, where appropriate, incorporate participation of the Bank of England, the Serious Fraud Office, the Public Prosecutor of Luxembourg, and the Attorney General of the Cayman Islands and the assistance of the United States Federal Bureau of Investigation and the DANY.

15. In the unlikely event that funds in the Worldwide Victims Fund and funds otherwise available to the Court Appointed Fiduciaries exceed the amount required for full compensation of the innocent depositors, creditors

and other victims of BCCI described in paragraphs 14 above, the excess funds will be returned to the United States for deposit into the U.S. Fund and distribution as contemplated in paragraph 12 above.

MISCELLANEOUS PROVISIONS

16. The parties hereto agree to assist each other in effectuating the Forfeiture Order and taking whatever action may be reasonably necessary to protect the interests of the parties hereto in the property, ordered forfeited, including, without limitation, identifying and collecting BCCI assets and causing the transfer thereof to the Custodial Account, promptly addressing claims and objections to the Forfeiture Order filed by third parties pursuant to 18 U.S.C. Sections 1963(g) and/or 1963(1) and, subject to the terms of this Agreement, transferring funds to the U.S. Fund and the Worldwide Victims Fund as provided herein.

17.(a) The Court Appointed Fiduciaries agree to cooperate fully with the DOJ and the DANY in their ongoing investigations and related proceedings concerning BCCI and BCCI related activities, individuals and entities, to the fullest extent allowed under applicable United States and foreign law.

(b) As used in this paragraph:

(i) "investigative information" includes documents, records, tangible evidence or other information concerning BCCI and related activities, individuals and entities requested by DOJ or DANY.

(ii) "production" of investigative information means to obtain access to, provide originals of where practicable, make and provide copies of, and permit use of such information, as specified by the requesting party

(c) In the event that the Court Appointed Fiduciaries conclude that production of investigative information violates a relevant and applicable foreign law, the Court Appointed Fiduciaries will promptly:

(i) notify the requesting party detailing the legal prohibition or limitation to production, access, copying or other use of said information;

(ii) comply, in as complete a form as possible, with the request, in a manner that does not result in a violation of the asserted foreign law inhibition; and

(iii) take such reasonable steps, including seeking appropriate waivers from appropriate persons and entities, and making applications or joining in applications made by the requesting party, at the discretion of the requesting party, to appropriate courts or other bodies to attempt to meet the foreign legal requisites necessary to permit compliance or overcome the foreign legal barriers inhibiting compliance.

(d) Cooperation hereunder includes, but is not limited to the following, consistent with clauses (a), (c), and (e) through (g) herein:

(i) The Court Appointed Fiduciaries agree to produce to the DOJ and the DANY any investigative information that is subject to the control of the Court Appointed Fiduciaries.

(ii) The Court Appointed Fiduciaries agree to use their good offices, when requested by either the DOJ or the DANY, to facilitate production of investigative information in the custody or control of third parties.

(iii) At the request of the DOJ or the DANY, the Court Appointed Fiduciaries will direct any employee or other person subject to their con-

trol to testify in any duly convened grand jury, court, or other criminal, investigative, or administrative proceeding, and will, in addition, use their good offices and, at the expense of the DOJ, all reasonable efforts to persuade former employees, clients, and shareholders of BCCI, and others to cooperate with the requesting party and to testify in any such proceeding.

(iv) The Court Appointed Fiduciaries agree to waive any privileges, including the attorney-client, accountant-client, and work product privileges, with respect to any investigative information existing as of July 5, 1991.

(v) The Court Appointed Fiduciaries further agree to provide investigative information created after July 5, 1991 to the DOJ and the DANY relating to the tracing and locating of assets that flowed from or to BCCI and BCCI related entities and persons as a result of criminal activity.

(e) With respect to investigative information created after July 5, 1991, it is not the intent of this Agreement to require the Court Appointed Fiduciaries to waive the attorney client privilege in connection with documents or communications reflecting or containing legal advice to the Court Appointed Fiduciaries or attorney work product related thereto or otherwise pertaining to the subject matter of their appointments.

(f) Where investigative information is requested that:

(i) was created after July 5, 1991,

(ii) was created for the purpose of negotiating settlement of specific creditor or depositor claims, and

(iii) would, in the opinion of the Court Appointed Fiduciaries, pose a substantial risk of jeopardizing the specific negotiations or materially interfere with the lawful performance of their fiduciary obligations, the Court Appointed Fiduciaries will so inform the requesting party and provide the requesting party an estimate of how long the perceived inhibition to disclosure would persist, and will pursue, if requested by the requesting party, efforts, including resort to an appropriate judicial body, to permit the disclosure of the requested information under circumstances that will preserve confidential and secure treatment of the information and avoid the risk of interference noted above.

(g) The DOJ agrees to assume the reasonable costs of obtaining production of the foregoing for the DOJ and the DANY, upon advance notice of the approximate cost and a statement of the reasons why such production is necessary.

18. As part of the sentence imposed in connection with the entry of the pleas contemplated in paragraphs 1 and 4 above, the Court Appointed Fiduciaries agree that BCCI shall be barred from doing business within the United States except upon written notice to the DOJ and the express written permission of the appropriate Department or Agency of the United States, and with respect to doing business within the State of New York, except upon the further written notice to the DANY and the express written permission of the New York Banking, and with respect to business in the State of California, except upon the express written permission of California Banking. This provision is not intended to limit the activities of the Court Appointed Fiduciaries, pursuant to their respective court or other appointments, within

the United States, in connection with the liquidation of BCCI. Additionally, before any person, other than the Court Appointed Fiduciaries, is appointed to act in a trustee or fiduciary capacity affecting assets located in the State of New York, the approval of the DANY and the New York Banking shall be obtained, and with respect to assets in California, the approval of California Banking shall be obtained.

19. The Court Appointed Fiduciaries will obtain, with the assistance of DOJ and DANY where appropriate, all regulatory, judicial, administrative or other filings, notices, applications, consents, orders or approvals required to be obtained in order for the Court Appointed Fiduciaries, on behalf of BCCI, to satisfy fully their obligations under this Agreement, including seeking any necessary modification of the Temporary Restraining Order, the Court Appointed Fiduciaries' request for a preliminary injunction in the Section 304 Proceeding and/or the Consent Order entered in connection with the 304 Proceeding on October 16, 1991.

20. The Court Appointed Fiduciaries agree to:

(a) consent to the assessment in the amount claimed in the civil monetary penalty action brought by the Board of Governors against BCCI on July 29, 1991; and

(b) comply with the Divestiture Orders issued by the Board of Governors on March 4, 1991 and May 6, 1991 (the "Board Orders").

The Board of Governors agrees to stay and not seek execution of that assessment against any property forfeited under this Agreement or located outside the United States and to not file any claim for this assessment in the New York or California BCCI SA liquidations or in any liquidation proceeding involving BCCI in Luxembourg, the Cayman Islands or elsewhere.

21. Subject to paragraph 20, the Board of Governors, FDIC, RTC, OTS, OCC and the New York and California Banking agree to forego additional civil monetary penalty and other similar damage actions wherein they seeks funds from or make claims against the Worldwide Victims Fund, the liquidation estates in the New York and California liquidation proceedings for BCCI SA, and foreign assets and liquidation estates of BCCI, except as follows:

(a) The FDIC, RTC, OTS, OCC and New York and California Banking specifically reserve their ability, as conservators, liquidators and receivers, and potential conservators, liquidators and receivers, to file compensatory claims in the foreign liquidation process, in accordance with the appropriate foreign law. Provided, however, that if Independence Bank and First American are sold or otherwise disposed of without loss to the Bank Insurance Fund, the FDIC will not file any such claim.

(b) Further, the FDIC, RTC, OTS, OCC, New York Banking and California Banking further reserve their ability on behalf of U.S. financial institutions acting as such or in their corporate capacity, or acting as a conservator, liquidator or receiver to pursue civil contract claims.

(c) Additionally, the Board of Governors and joint issuers of the Board of Governors Orders may enforce the Board's Orders or subsequent orders issued by them in connection with the required divestiture of BCCI's interests in First American or Independence Bank.

(d) The SEC agrees to forgo any enforcement action against BCCI related to the acquisition and sale of stock and other securities in connection with the financial institutions described in the U.S. Information.

(e) The Court Appointed Fiduciaries also agree to cooperate with the Board of Governors, FDIC, RTC,

OTS, OCC, and SEC in their investigations of BCCI-related wrongdoing, and in related proceedings, in the manner described in paragraph 17 above.

(f) The Court Appointed Fiduciaries release any and all claims which they may have against the Board of Governors, FDIC, RTC, OTS, OCC, SEC, New York Banking and California Banking for actions taken in their respective regulatory capacities.

(g) Nothing in this Agreement bars New York Banking or California Banking from recovering their administrative expenses from their respective liquidation proceedings, in accordance with their respective state laws.

22. The United States and the DANY agree that, should the U.S. District Court and the N.Y. Supreme Court accept the pleas contemplated in paragraphs 1 and 4 above, and should the U.S. District Court enter the Forfeiture Order all pending criminal charges heretofore brought against BCCI by either of them shall be concluded and neither will bring any additional criminal charges against BCCI for matters occurring before July 5, 1991.

23. Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that the specific sentence, including the Forfeiture Order, set forth in this Agreement provides the appropriate disposition of this case and that the parties will ask the Court to enter a Judgment of Conviction and issue a Forfeiture Order consistent with this Agreement within 10 days of the entry of the pleas in this case, considering that time is of the essence (or such other date as the U.S. District Court may set). If the U.S. District Court accepts the agreed sentence including the forfeiture as set forth above, the Court Appointed Fiduciaries, on behalf of BCCI, may not withdraw the plea contemplated in paragraph 1 above as a matter of right under Federal Rule of Criminal Procedure 11(e)(2) and (4). The Court Appointed Fidu-

ciaries, on behalf of BCCI, understand that the Forfeiture Order of the U.S. District Court is enforceable both as a part of the sentence and in the same manner as a civil judgment. Should the judge refuse to accept the forfeiture aspect of the sentence, this Agreement shall become null and void and no party will be bound hereto.

24. The Court Appointed Fiduciaries and their attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to induce the Court Appointed Fiduciaries to enter a plea of guilty on behalf of BCCI. The Court Appointed Fiduciaries understand that failure to abide by any term of the Agreement is a violation of the Agreement and may render it null and void or result in such sanction as may be determined by the U.S. District Court or N.Y. Supreme Court. The Court Appointed Fiduciaries further agree this Agreement shall be filed and become a part of the record in the U.S. District Court and the N.Y. Supreme Court.

25. The patries hereto understand and agree that all of the agreements contained herein shall be conditional on each such agreement and if, for any reason, the U.S. District Court, the N.Y. Supreme Court, or any other United States court of competent jurisdiction shall find any provision of this Agreement to be unenforceable, this Agreement may become null and void, at the option of either the DOJ, DANY and Court Appointed Fiduciaries, and no party hereto will be bound hereto.

26. This Agreement may be executed in one or more identical counterparts, whether transmitted by telecopier or otherwise. Each such counterpart shall be deemed to be an original for purposes of this Agreement.

27. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements—

oral, written, expressed or implied—that in any way affect the validity of this Agreement or any of its terms. All prior negotiations, oral and written, are merged in this Agreement. Evidence of such negotiations, including prior drafts, shall not be admissible for any purpose in any proceeding related to this Agreement or its performance. Any amendments shall be with the mutual, written consent of the parties.

28. This Agreement shall be governed by and construed in accordance with the laws of the United States of America, except with respect to the matters contemplated in paragraph 4 through 7 hereof which, only to the extent necessary, shall be construed in accordance with applicable New York law.

29. The Court Appointed Fiduciaries agree to a tolling of any applicable statute of limitations as to criminal matters related to BCCI during the term of this Agreement and for 90 days thereafter.

WAIVER OF TRIAL RIGHTS

30. The Court Appointed Fiduciaries have read the charges against BCCI contained in the U.S. Information and the N.Y. Indictment, and those charges have been fully explained to them by their attorneys.

31. The Court Appointed Fiduciaries understand that in accordance with federal law, 18 U.S.C. Section 3013, upon entry of judgment of conviction, BCCI will be assessed $50 for each count, in addition to any other penalty imposed pursuant to this Agreement. Similarly, the Court Appointed Fiduciaries understand that in accordance with New York law, Penal Law Section 60.35, each of the pleading corporate entities upon entry of judgment of conviction, will be assessed a $100 mandatory surcharge and a $2 crime victim assistance fee, in addition to any other penalty imposed.

32. The Court Appointed Fiduciaries understand that by entering a guilty plea on behalf of BCCI, they surrender certain rights under federal and New York State law, including the following:

(a) If BCCI persisted in a plea of not guilty to the charges against it, BCCI would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. BCCI has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, BCCI, under New York law, and BCCI, the government and the judge, under federal law, all must agree that the trial be conducted by the judge without a jury.

(b) In the federal and New York prosecutions, if the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. BCCI and its attorney would have an opportunity to seek the removal of prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The respective juries would have to agree unanimously before it could return a verdict of either guilty or not guilty, as to each count of the U.S. Information and the N.Y. Indictment. The respective juries would be instructed that BCCI is presumed innocent, and that it could not convict BCCI unless, after hearing all the evidence, it was persuaded of BCCI's guilt beyond a reasonable doubt, and that it was to consider each count of the U.S. Information and the N.Y. Indictment separately.

(c) If BCCI and the government waive the right to a jury trial, the appropriate court after hearing all the evidence, and considering each count separately, would determine whether or not it was persuaded of BCCI's guilt beyond a reasonable doubt in connection with the U.S. Information and the N.Y. Indictment.

(d) At a federal and New York state trial, whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against BCCI. BCCI would be able to confront those prosecution witnesses and its attorney would be able to cross-examine them. In turn, although it would not be obligated to do so, BCCI could require the attendance of its witnesses within the territorial jurisdiction of the United States through the subpoena power of the court, or in connection with the N.Y. Indictment, as provided under New York law.

(e) BCCI would have the right to have the charges outlined in the U.S. Information brought by indictment upon the concurrence of not less than 12 members of a grand jury, comprised of at least 16 and not more than 23 persons, that there is probable cause for the charges.

(f) Should the plea to the U.S. Information occur prior to entry of the guilty plea to the New York Indictment, the Court Appointed Fiduciaries waive any defense to the N.Y. Indictment based upon the New York State Double Jeopardy law in order to permit the guilty plea to the New York State Indictment to be entered as provided herein.

33. The Court Appointed Fiduciaries, on behalf of BCCI, understand that by entering a plea of guilty as provided herein, the Court Appointed Fiduciaries, on behalf of BCCI, are waiving all the rights set forth in the prior paragraph. The Court Appointed Fiduciaries' attorneys have explained those rights to the Court Appointed Fiduciaries, and the consequences of the waiver of those rights as contemplated herein. The Court Appointed Fiduciaries understand that they are waiving all appellate issues that might have been available if they had exercised its right to trial.

34. Upon imposition of the sentence contemplated herein, the DOJ will move to dismiss the remaining charges against BCCI currently pending in any U.S. District Court.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of December 19th, 1991.

Agreed by United States, and the People of the State of New York:

By:

Department of Justice

Through:

William P. Barr
Attorney General

By /s/ George J. Terwilliger
GEORGE J. TERWILLIGER
Acting Deputy Attorney General

By /s/ Robert S. Mueller III
ROBERT S. MUELLER III
Assistant Attorney General
Criminal Division

By /s/ [Illegible] Acting
SHIRLEY D. PETERSON
Assistant Attorney General
Tax Division

By /s/ Stuart M. Gerson
STUART M. GERSON
Assistant Attorney General
Civil Division

People of the State of New York

By:

/s/ Robert M. Morgenthau
ROBERT M. MORGENTHAU
District Attorney
New York County

And the following
United States Attorneys:

/s/ J.B. Stephens
JAY B. STEPHENS
District of Columbia

/s/ Joe D. Whitley
JOE D. WHITLEY
N.D. Georgia

/s/ Robert W. Genzman
ROBERT W. GENZMAN
M.D. Florida

/s/ Lourdes G. Baird
LOURDES G. BAIRD
C.D. California

/s/ Dexter W. Lehtinen
DEXTER W. LEHTINEN
S.D. Florida

OTTO G. OBERMAIER
S.D. New York

Agreed by Court Appointed Fiduciaries

By:

But in the name and on behalf of the company by authority of the court and without personal liability

/s/ JD, CF, BAS

COMMISSAIRES OF BCCI HOLDINGS (LUXEMBOURG) S.A., not in their individual capacities

/s/ Brian Smouha
BRIAN SMOUHA

/s/ Jacques Delvaux
JACQUES DELVAUX

/s/ Constant Franssone
CONSTANT FRANSSONE

COMMISSAIRE OF BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., not in his individual capacity

/s/ Brian Smouha
BRIAN SMOUHA

JOINT PROVISIONAL LIQUIDATORS OF BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LTD., and INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LTD., not in their individual capacities

/s/ Ian Wight
IAN WIGHT

ROBERT AXFORD

Agreed by U.S. Regulators:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

By: /s/ William W. Wiles
WILLIAM W. WILES
Secretary

FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ William Taylor
WILLIAM TAYLOR
Chairman

RESOLUTION TRUST CORPORATION

By: /s/ William Taylor
WILLIAM TAYLOR
Chairman

OFFICE OF THE COMPTROLLER OF THE CURRENCY

By: /s/ Robert L. Clarke
ROBERT L. CLARKE
Comptroller of the Currency

OFFICE OF THRIFT SUPERVISION

By: /s/ Timothy Ryan
TIMOTHY RYAN
Director

SECURITIES AND EXCHANGE COMMISSION

By: /s/ Richard C. Breeden
RICHARD C. BREEDEN
Chairman

Agreed by New York State Regulators:

SUPERINTENDENT OF BANKS OF THE STATE OF NEW YORK, in his capacity as Liquidator of the New York Agency of Bank of Credit & Commerce International, S.A.

By: /s/ Derrick D. Cephas
Name:
Title:

By:

JAMES E. GILLERAN

SUPERINTENDENT OF BANKS OF STATE OF CALIFORNIA, As Such and As Liquidator of California Property and Business of Bank of Credit and Commerce International, S.A.

Agreed by California State Regulators:

SUPERINTENDENT OF BANKS OF STATE OF CALIFORNIA, As Such and As Liquidator of California Property and Business of Bank of Credit and Commerce International, S.A.

/s/ James E. Gilleran
JAMES E. GILLERAN
Superintendent

APPENDIX B

[Filed Jan. 24, 1992]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

ORDER OF FORFEITURE

The United States of America and the four corporate defendants in this case (collectively, "BCCI") have entered into a Plea Agreement dated December 19, 1991, by which the defendants agree to plead guilty to an offense under Title 18, United States Code, Section 1962, and to forfeiture of the assets of the four corporate defendants located in the United States pursuant to Section 1963 of Title 18.

As recited on the record today in open court, the Court has determined pursuant to Rule 11(e), Federal Rules of Criminal Procedure, that the Plea Agreement is acceptable to the Court. The Court has determined pursuant to Rule 11(f), Federal Rules of Criminal Procedure, that there is a factual basis for the pleas of guilty and for the

forfeiture of the defendants' assets as set forth in the Superseding Information, the Plea Agreement, the statements of counsel in open Court, and the testimony of the representative of the defendants.

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Pursuant to Title 18, United States Code, Sections 1963(a)(1), (a)(2), and (a)(3), the following property located in the United States of the four corporate defendants is hereby condemned and forfeited to the United States of America:

(a) the deposits and other assets listed on Exhibit A, which Exhibit A is hereby made a part of this Order, except those funds listed on Exhibit A which are held by American Express Bank Ltd., Bank of California, Capital Bank Miami, and Oppenheimer & Co., Inc., because counsel have been unable at this time to reconfirm or update the list of assets held by those institutions. Counsel for the parties to this case shall provide to the Court, by January 29, 1992 at 12:00 noon, an updated list of forfeitable assets held by American Express Bank Ltd., Bank of California, Capital Bank Miami, and Oppenheimer & Co., Inc., at which time, upon approval by the Court, such assets shall become subject to this Order of Forfeiture.

(b) the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in Independence Bank, but not the stock, security or other interest itself;

(c) the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in First American Bankshares, Inc., but not the stock, security or other interest itself;

(d) the balance of the liquidation estates of the Los Angeles and New York agencies of BCCI, S.A., but not the estates themselves, upon completion of liquidation pro-

ceedings conducted by the New York banking and the California banking entities in accordance with the laws of California and New York. For purposes of the foregoing, the "liquidation estates" shall consist of all of the rights and interests of the Superintendent of Banks of the states of New York and California under their respective state law banking statutes with respect to the assets of BCCI, S.A. located in their respective states and the assets of the New York and California agencies of BCCI, S.A. The liquidation estates do not include the assets enumerated in Exhibit A; and

(e) the entirety of BCCI's ownership interests in all other property located in the United States, including, without limitations, real property and all tangible and intangible personal property, however held, whether subsequently identified, determined or discovered pursuant to paragraph 10 of the Plea Agreement, in the course of the ongoing liquidation proceedings described therein or otherwise identified, determined, or discovered in any manner at any time, but not property that may be brought into the United States by or on behalf of Court Appointed Fiduciaries of BCCI in the course of the management or disbursement of the liquidation estates as described in the Plea Agreement.

2. The Court finds that the above-listed forfeited assets constitute interests acquired or maintained by the defendants, in violation of Title 18, United States Code, Section 1962; or are interests in, securities of, claims against, or property or contractual rights of various kinds affording a source of influence over an enterprise which the defendants established, operated, controlled, conducted, or participated in, in violation of Title 18, United States Code, Section 1962; or are property constituting or derived from, proceeds the defendants obtained, directly or indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962.

3. It is further ORDERED that, except as specifically excepted in paragraph 1(a) and as noted in paragraph 4, each of the financial institutions and entities listed on Exhibit A shall immediately pay to the United States Marshal for the District of Columbia or his duly authorized representative:

1) the entire contents of the accounts listed on Exhibit A, including interest accrued;

2) any funds transferred since July 5, 1991, from any account listed on Exhibit A that are still within the possession or control of the financial institution, regardless of the account into which those funds were transferred and regardless of the reason for the transfer; and

3) any other funds in any other account held by BCCI (Overseas) or International Credit and Investment Company (Overseas).

Such payments shall not be limited to the "Approximate Amounts" listed on Exhibit A if the balance as of this date is greater than the Approximate Amount. For the purposes of this paragraph, an "account listed on Exhibit A" includes any account that previously held funds listed on Exhibit A, or any account to which such funds have been transferred.

4. With respect to the funds listed on Exhibit A as being held on deposit in the Court Registry Investment System ("CRIS") interest-bearing account administered by the United States District Court for the Southern District of Texas, such funds are hereby ORDERED forfeited to the United States. In lieu of the immediate transfer of those funds pursuant to paragraph 3, the United States shall take all necessary steps pursuant to Title 28, United States Code, Section 2042, to obtain an order directing the transfer of those funds to the United States Marshal for the District of Columbia.

5. It is further ORDERED that to the extent necessary to carry out the terms of this Order, BCCI, pursuant to

the Plea Agreement, shall assist the financial institutions and entities listed on Exhibit A in the transfer of such funds.

6. It is further ORDERED that the United States Marshal's Service shall deposit all funds received pursuant to this Order of Forfeiture in the Department of Justice Seized Asset Deposit Fund Account (hereafter, "the Account") and invest it with interest as permitted by Title 28, United States Code, Section 524(c), as amended October 28, 1991.

7. Pursant to the ancillary hearing procedures set forth in Title 18, United States Code, Section 1963(1), no disbursements shall be made from the Account without further Order of this Court. Should it appear that no claim has been made with respect to particular assets transferred to the Account pursuant to Section 1963(1), or at such time as such claims to such assets have been resolved, the Court will entertain motions from the government for the disbursement of those assets.

8. As the proceeds identified in paragraphs 1(b) through (e) become available, the Department of Justice, on behalf of the United States, shall apply to this Court for appropriate Orders effecting the transfer and deposit of such proceeds into the Account. The notice provisions of Section 1963(1) shall apply to each asset so transferred to the Account pursuant to such further Orders.

9. Pursuant to Rule 32(b)(2), Federal Rules of Criminal Procedure, it is further ORDERED that each of the above listed properties, except as specifically excepted in paragraph 1(a) and as noted in paragraph 4, shall be seized *forthwith* by the United States Marshal for the District of Columbia or his duly authorized representative and disposed of in accordance with the law and this Order of Forfeiture.

The Clerk is hereby directed to send copies of this Order to all counsel of record and the United States Marshal.

IT IS SO ORDERED.

Entered this 24th day of January, 1992.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

EXHIBIT A

Account No.	Account Name	Approx. Balance
Bank of New York		New York
018872-500	BCCI (Overseas) Barbados	202,708.55
8109803821	BCCI (Overseas) Barbados	101,108.90
019054-500	BCCI (Overseas) Bombay	3,245,017.16
8109803155	BCCI (Overseas) Bombay	851,642.06
8900054840	BCCI (Overseas) Bombay	159,383.66
018856-500	BCCI (Overseas) Cayman	1,834,405.29
8109292983	BCCI (Overseas) Cayman	50,919.08
8900051531	BCCI (Overseas) Cayman	745.86
8900053658	BCCI (Overseas) Cayman	0.00
8900054301	BCCI (Overseas) Cayman	300,027.55
8900054328	BCCI (Overseas) Cayman	310,849.60
8900054794	BCCI (Overseas) Cayman	33,057.60
8900054921	BCCI (Overseas) Cayman	152,093.70
019089-500	BCCI (Overseas) Panama	8,016,979.39
8109298752	BCCI (Overseas) Panama	144,240.44
8900053399	BCCI (Overseas) Panama	386,467.59
Subtotal		15,789,646.43
Citibank		New York
36054705	BCCI (Overseas)	11,064,150.00
36060398	BCCI (Overseas)	4,402.00
Custody Account	BCCI (Overseas)	1,181,398.00
Custody Acct 089543	BCCI (Overseas)	537,000.00
Subtotal		12,786,950.00
Court Registry Investment System		S.D. Tex.
86078	BCCI (Overseas) Macau	109,112.75
86047	BCCI (Overseas) Muscat	4,339,738.83
86052 [1]	BCCI S.A.—Abu Dhabi	60,563,405.50
86041	BCCI (Overseas) Seoul	80,770.71
Subtotal		81,709,103.07

[1] This account contains additional funds not subject to forfeiture. Only the amcunt specified, plus interest accrued since July 18, 1991, is subject to forfeiture.

Account No.	Account Name	Approx. Balance
Doha Bank Ltd.		New York
55804511	BCCI (Overseas)	500,308.00
First Florida		Tampa
440-757-7116	Capital Equiv. Dep.	15,299,703.58
First National Bank of Louisville		Louisville
70328615	BCCI (Overseas)	3,727,520.97
Hufstedler, Kaus & Ettinger		Los Angeles
Intermagnetics Trust Acct		487,448.84
Kemper Security		Chicago
1278-4388	BCCI (Overseas)	583,305.00
Mabon Securities		New York
04-4050	BCCI (Overseas)	2,661,808.53
Manufacturers Hanover		New York
(none)	BCCI (Overseas)	40,240.00
Paine Webber		New York
DN-R5056-01	BCCI (Overseas)	73000.00
Security Pacific Intl		New York
05007001	BCCI (Overseas) Abidjan	3,305,447.05
07012001	BCCI (Overseas) Cayman	4,124,193.31
04020101	BCCI (Overseas) Istanbul	1,723,590.57
04020023	BCCI (Overseas) Izmir, Turkey	308,079.19
04011002	BCCI (Overseas) Karachi	3,056,794.59
05011001	BCCI (Overseas) Khartoum	701,251.94
04012039	BCCI (Overseas) Manila	783,178.47
04020030	BCCI (Overseas) Mersin, Turkey	116,667.53
05008001	BCCI (Overseas) Monrovia	103,500.48
03005016	BCCI (Overseas) Paris, France	857,082.72
04018017	BCCI (Overseas) Seoul, Korea	5,714,329.75
04031016	BCCI (Overseas) Shenzhen China	589,044.22
05009001	BCCI (Overseas) Sierra Leone	2,056,883.83
04027001	BCCI (Overseas) Sri Lanka	1,818,758.32
05012001	BCCI (Overseas) Togo	104,511.45
Subtotal		25,363,313.42

Account No.	Account Name	Approx. Balance
Security Pacific National		New York
607750471	BCCI (Overseas) Abu Dhabi	1,785,845.00
607750491	BCCI (Overseas) Abu Dhabi	44,500,000.00
Subtotal		46,285,845.00
Total		$188,692,117.56

The following accounts and approximate amounts are as they appear on Schedule B of the Plea Agreement but have not been reconfirmed or updated by counsel:

American Express Bank Ltd. New York, New York	$ 60,255,910	Ref. #16211581 (From Acct. #703876)
	$ 31,793,704	Acct. #703876 (Includes Offsets)
	$ 30,009,792	Acct. #160300 [2] (From Acct. #703876)
	$ 12,027,031	Acct. # #53066; 353066; 53173; 353173; 53165; 353165; 698316; 714758; 53116; 52977; 352977; 705517; 3705517; and 711036
	$ 12,444,311	Brokerage Account-Deposit (Includes Offsets) (Account Number Unknown)
Bank of California New York, New York	$ 1,283,093	(Account Number Unknown)
Capital Bank Miami Miami, Florida	$ 24,215	Acct. #902205102
	$ 946,485	Acct. #0902205110
	$ 3,053,641	Cert. #085-0053580
	$ 1	Acct. #902204122

[2] This account contains additional funds not subject to forfeiture. Only the amount specified plus interest accrued since July 5, 1991 is subject to forfeiture.

Oppenheimer & Co., Inc.	$ 2,919,400	Acct. #05391184
New York, New York	$ 15,802,870	Client Acct. #05391180
	$ 6,184,803	Client Acct. #05391180
Total	$176,745,256	

APPENDIX C

[Filed Jun. 23, 1992]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED,

Defendants.

ORDER APPOINTING TRUSTEE

This matter came before the Court on the motion of the United States of America, the court-appointed fiduciaries for the corporate defendants, the District Attorney for New York County, and the Board of Governors of the Federal Reserve System ("Federal Reserve") for the appointment of a trustee to effect the sale or other disposition of all shares of stock in First American Corporation ("FAC") or its assets, including First American Bankshares, Inc. ("FAB") and FAB's subsidiaries.

A hearing was held on June 16, 1992 to assist the Court in determining whether granting the motion would be in the public interest. At the hearing, the parties to this action and others presented arguments in favor of granting the joint motion and additionally evidenced their

intent and understanding by filing Government Exhibits 1, 2, and 3. The latter was offered by Nicholas deB. Katzenbach, Chairman of FAB, who, in his official capacity, expressed his full encouragement and consent to the appointment of Harry W. Albright, Jr. as Trustee.

Upon consideration of the joint motion and the representations made at the hearing, the Court finds that appointment of Harry W. Albright, Jr., a person of impeccable credentials, as Trustee is authorized by 18 U.S.C. § 1963(e), will assist the satisfaction of obligations created by the plea agreement, and will substantially serve the public interest. Appointment of the Trustee, with his corresponding power and duties, will cause BCCI's relationship with FAC, FAB, and FAB's subsidiaries to be effectively severed, thereby ensuring public confidence in those entities, and will allow the expeditious and productive resolution of issues concerning BCCI's as yet undefined interest in those entities. Further, appointment of the Trustee will afford third parties a procedure for determining their rights, if any, to the proceeds of the sale or other disposition of FAC shares or assets.

I. Purpose of this Order

The purpose of this Order is to enable the corporate defendants ("BCCI") to comply with their obligation under the Plea Agreement to divest themselves of any interest they hold in Credit and Commerce American Holdings N.V. ("CCAH"), and its subsidiaries FAC and FAB, to enable the government to realize its interest, arising under the Plea Agreement and the Order of Forfeiture, in the proceeds of the sale or other disposition of BCCI's interest in CCAH and its subsidiaries, and to carry out the Divestiture Order issued by the Board of Governors of the Federal Reserve.

II. Appointment of Trustee

Accordingly, it is hereby ORDERED that Harry W. Albright, Jr. is appointed Trustee pursuant to 18 U.S.C. § 1963(e).

III. Powers and Duties of the Trustee

The Trustee shall collect and hold, subject to any existing lien, all the issued and outstanding shares of FAC, and shall sell or otherwise dispose of such shares or cause the boards of directors of FAC and FAB to sell or otherwise dispose of all assets owned or controlled directly or indirectly by FAC at any given time, including, without limitation, all of the issued and outstanding capital stock of FAB or of the FAB subsidiaries, consistent with the purposes of this Order, to a purchaser or purchasers approved by the Federal Reserve, and on terms and conditions (a) that are consistent with the taking of reasonable steps to obtain the best price for the shares or assets that can be obtained, taking into account need or agreement for infusion of new capital into First American subsidiary banks and reasonable banking standards; *provided* that the sale takes place expeditiously, but in any event within one year from the date of this Order or such further time as the Court may permit, and (b) that are approved by the Trustee and the Court.

The Trustee shall exercise all rights, titles, powers, and privileges of a shareholder of FAC, including, to the extent permitted by applicable law of the state of incorporation of the relevant corporation, the right to exercise exclusively any and all voting rights and other rights or benefits attached to, derived from, or otherwise attributable to the FAC shares, the right to amend or cause the amendment of the by-laws of FAC, FAB, and the FAB subsidiaries and to elect and remove, or cause the election or removal of, the directors of FAC, FAB, and the FAB subsidiaries, and to cause FAC, FAB, and the FAB sub-

sidiaries, acting through their respective boards of directors, to execute the purposes of this Order.

The Trustee shall have the right to incur and pay such reasonable expenses and charges, including fees for legal counsel and professional advisors, as he may deem appropriate in the performance of his duties herein stated, subject to Court approval as provided below.

The Trustee shall not be responsible for directing or managing the day-to-day operations of FAC, FAB, or the FAB subsidiaries. The Trustee, however, may cause the directors and officers of FAC to (i) provide the Trustee with information available to, or obtainable by them, relating to the valuation, direction, and management of the operations of FAC, FAB, and the subsidiaries of FAB, and (ii) provide the Trustee with the opportunity to attend all meetings of the respective boards of directors of FAC, FAB, and the subsidiaries of FAB.

IV. Reports

The Trustee shall provide the Court, on or before the 25th day after each calendar quarter: (1) statements of receipts, expenses, and charges on a cash basis for the preceding calendar quarter of the Trust and a statement of assets and liabilities on a cash basis as of the last day of such calendar quarter of the Trust, and (2) a written report summarizing the efforts and activities to effect the sale or other disposition of the FAC shares or assets.

V. Expenses of the Trustee

The reasonable expenses of the Trustee, as determined by the Court (hereafter "the expenses"), shall be paid at the end of each month beginning in the month in which the FAC shares are authorized to be transferred to the Trustee.

Until such time as the expenses can be offset against or reimbursed from the proceeds resulting from the sale

of the FAC shares or assets, as provided by 18 U.S.C. § 1963(e), the expenses shall be paid from the funds forfeited by BCCI pursuant to the Court's January 24, 1992 Order of Forfeiture as a first order of disbursement from the Custodial Account, after reimbursement of the court-appointed fiduciaries for the $5 million capital infusion previously ordered as a priority by the Court, described in the Plea Agreement and in Paragraph 6 of the Order of Forfeiture ("Custodial Account").

In the event that funds are not available to pay such expenses either from the sale or other disposition of the FAC shares or assets or from the Custodial Account, the expenses shall be paid from the Department of Justice Assets Forfeiture Fund ("the Fund"), as authorized by 28 U.S.C. § 524(c)(1)(A)(i). In the event that the Fund is used to pay the expenses of the Trustee, it shall be reimbursed as a first priority from the Custodial Account, after reimbursement of the court-appointed fiduciaries for the $5 million capital infusion, which in turn shall be reimbursed as a first priority from the proceeds of the sale of the FAC shares or assets.

Within ten days from the date the FAC shares are authorized to be transferred to the Trustee or from the date of this Order, whichever is later, the Department of Justice and the Trustee will submit to the Court for its approval a budget providing for the reasonable and necessary compensation and other expenses of the Trustee for the operation of the Trust pending the sale or other disposition of the FAC shares or assets. Such budget may be supplemented or revised from time to time with the approval of the Court.

VI. Distribution of Proceeds

It is further ORDERED that following the sale or disposition of all of the FAC shares or assets, the Trustee shall give notice of such sale or disposition to the Court,

counsel for the United States, the District Attorney for New York County, counsel for the court-appointed fiduciaries, counsel for the Board of Governors of the Federal Reserve, all shareholders of record of CCAH, pursuant to a list to be provided by the Federal Reserve Board, and all creditors of CCAH and all creditors of Credit and Commerce Investment, B.V. ("CCAI"), as reflected on the books and records of CCAH and CCAI and as set forth in lists certified to the Trustee by CCAH and CCAI. Consistent with the Court's Order of Forfeiture of January 24, 1992, any proceeds remaining after the payment or reimbursement of the expenses of the Trustee, as provided in Paragraph V, shall be used to pay, in the following order of priority, such bona fide debts of FAB, FAC, CCAI, and CCAH as are required by binding contract or law to be paid. Any remaining proceeds should be held by the Trustee in an interest-bearing account or instrument pending further order of the Court. Within thirty days of receipt of notification from the Trustee of the sale or other disposition of all the FAC shares or assets, the United States of America and the Federal Reserve will provide the Court with a determination of what portion of FAC's stock BCCI owns and is subject to forfeiture. Upon the filing of such determination, the United States shall take all necessary steps, pursuant to 18 U.S.C. § 1963(*l*), to notify any person or entity with a potential legal right, title, or interest in the proceeds of the sale or disposition that a portion of those proceeds are subject to forfeiture to the United States.

No portion of the proceeds of the sale or disposition shall be disbursed by the Trustee except with respect to the expenses of the Trustee and bona fide debts as set forth above or as otherwise as ordered by the Court. The Trustee shall promptly apply to the Court for authority to transfer the portion of the proceeds of the sale or disposition which the United States does not claim to

be subject to forfeiture to the parties entitled to that property.

IT IS SO ORDERED.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

June 23, 1992

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, and INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

TRUSTEE'S NOTICE OF SALE

PLEASE TAKE NOTICE that, pursuant to the Order Appointing Trustee issued by United States District Judge Joyce Hens Green and filed on June 23, 1992 in the United States District Court of the District of Columbia (a copy of which is attached to this Notice), all of the assets of First American Corporation to be sold under the Order Appointing Trustee have been sold.

Dated: June 6, 1994
New York, New York

Very truly yours,

/s/ Harry W. Albright Jr.
HARRY W. ALBRIGHT JR.
Trustee
Suite 1914
1270 Avenue of the Americas
New York, New York 10020
(212) 332-2620

To: The Honorable Joyce Hens Green
and all persons listed in the
attached Certificate of Service

APPENDIX E

[Filed Dec. 21, 1994]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

PROCEDURAL ORDER

On January 24, 1992, this Court entered an Order of Forfeiture directing that all assets of the BCCI defendants in the United States be forfeited to the United States. In particular, paragraph 1(c) of the Order of Forfeiture directed the defendants to forfeit BCCI's interests in "the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in First American Bankshares, Inc., but not the stock, security or other interest itself."

On June 23, 1992, the Court appointed Harry W. Albright, Jr., as Trustee to hold the stock of First American Corporation ("FAC"). The Order Appointing Trustee authorized the Trustee to "sell or otherwise dispose of [the FAC] shares or cause the Boards of Directors to sell or otherwise dispose of all assets owned or con-

trolled directly or indirectly by FAC." Thereafter, the Trustee and the Board of Directors of First American Bankshares, Inc., ("FAB") determined that the maximum price would be obtained by causing FAB to sell the stock or assets of its subsidiaries, while retaining certain BCCI-related and other liabilities. This decision, consistent with the Trustee's mandate to obtain the best price, resulted in more than $460 million being realized from the sale of these assets. Given that back in June of 1992 the Federal Reserve estimated FAB's liabilities to exceed its assets by approximately $300 million, the gain achieved by the Trustee was truly remarkable. On June 6, 1994, the Trustee filed his Notice of Sale notifying the Court and all parties that the sale of FAB's assets was complete. All concerned entities agree that the Trustee exercised sound business judgment in the manner in which he chose to manage this delicate situation.

On July 11, 1994, in accordance with the Order Appointing Trustee, the Federal Reserve and the Department of Justice ("DOJ") jointly filed with the Court a report setting forth their determination of what portion of the capital stock of Credit and Commerce American Holdings, N.V. ("CCAH")[1] is owned by BCCI and is subject to forfeiture (the "Notice Regarding Ownership"). The Notice Regarding Ownership states, *inter alia*, that BCCI and its nominees held or controlled 61.156% of the capital stock of CCAH.

Thereafter, DOJ submitted a proposed order of forfeiture which included "61.156 percent of the net proceeds of the sale of the assets of [FAB] and [FAC]" with an approximate value of $287 million. DOJ recognized that BCCI technically had an ownership interest only in

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[1] CCAH owns 100% of the stock of Credit and Commerce American Investments ("CCAI"), which owned 100% of the stock of FAC, which, in turn owns 100% of the stock of FAB. Pursuant to the Order Appointing Trustee, CCAI transferred the stock of FAC to the Trustee, who is now the sole stockholder of FAC.

CCAH, but asserted that 18 U.S.C. § 1963(e) authorized the Court to disregard the corporate form and reach the assets of BCCI's wholly-owned subsidiaries.

This proposal prompted an objection from the Trustee and the Boards of Directors of FAB and FAC, who asserted that BCCI's forfeitable interest was more accurately defined as "61.156 percent of the amount distributable to CCAH shareholders as a consequence of the liquidation or other disposition of their indirect interest in First American Corporation". This proposal similarly estimated BCCI's interest to be $287 million. It was asserted that the Boards of Directors of FAB and FAC had to liquidate FAB and FAC in accordance with Virginia corporate dissolution procedures before BCCI would obtain a forfeitable interest. The Trustee further maintained, as had DOJ, that a "procedural order" was required to instruct the boards of directors how to distribute the funds.

All interested entities subsequently briefed the legal, procedural and practical issues involved. DOJ asserted that the Court should exercise its broad authority under 18 U.S.C. § 1963(e) to seize the assets at the FAB level and not leave the dissolution of FAB and FAC to the vagaries of state law. The Court-Appointed Fiduciaries agreed at least with the legal principle that the Court had the authority to seize the assets prior to any distribution to CCAH. The Trustee and the Boards of Directors of FAB and FAC strongly disagreed. They asserted that the Court's authority was not nearly as broad as the United States believed, and that forfeiture at the FAB level was not consistent with the Plea Agreement, the First Order of Forfeiture or the Order Appointing Trustee. The District Attorney of New York County opined that the United States' position was ambiguous and could lead to unintended confusion.

Because of these divergent views, a hearing was held on December 19, 1994. The hearing served to focus all on the true issue at hand: whether the Court *should*—

not whether it could—forfeit the funds at the FAB level or whether the Trustee and the boards of directors should dissolve FAB and FAC before any forfeiture occurs. The Trustee and the boards of directors did not challenge this Court's authority to forfeit the money at the FAB level; rather, they stated that they should be given the opportunity to continue on their successful path.

The Court reviewed the respective positions, and has, this date, entered an Order of Forfeiture which provides for the forfeiture of 61.156% of the amount distributable to CCAH shareholders as a consequence of the liquidation or other disposition of BCCI's indirect interest in FAC. This Order of Forfeiture was not entered because of this Court's view that it lacked the authority to forfeit the funds at the subsidiary level. Indeed, 18 U.S.C. § 1963(e), applied in the context of this truly extraordinary case, grants the Court broad discretion to take any necessary action. Nonetheless, the more appropriate and prudent exercise of this discretion is to refrain from utilizing it to its fullest extent and to permit those whose judgment has proven so sound to continue their chosen course. This decision does not, in any way, suggest a lack of confidence in the United States' proposal. The United States has worked faithfully and fought tenaciously to achieve the maximum possible return for the victims of this tragedy and it has shown a deft ability to manage this remarkable case.

The proceeds of the sale of FAB's assets were received by, and are currently under the control of, FAB. FAB and FAC must complete the liquidation of their assets and liabilities in accordance with Virginia law before they can distribute funds to their respective shareholders, FAC and the Trustee. The Trustee has submitted a proposed order setting forth procedures for completion of the steps by which the United States and other persons entitled thereto can realize the value of their interests in CCAH and its subsidiaries. The Court has determined that the

proposal is an appropriate means of completing the distribution process so that funds can be made available to the United States government and the victims of BCCI as expeditiously as possible,[2] and the Court has every confidence that the Trustee will act in full accordance with the goal of a speedy, fair and just resolution of these matters.

Accordingly, it is hereby ORDERED that:

1. Upon the entry of this Order, the Trustee shall cause the Boards of Directors of FAB and FAC each promptly to adopt a Plan of Voluntary Dissolution and Complete Liquidation (the "Dissolution Plans") in accordance with this Order and the applicable provisions of the Virginia Stock Corporation Act (the "Virginia Act").

2. Such Dissolution Plans shall provide for, and promptly upon the adoption thereof the Trustee shall cause FAB and FAC promptly to give, written notice to all "known claimants" (the "Notice") in accordance with the provisions of Section 13.1-746 of the Virginia Act. For purposes of this Order, the term "known claimants" shall mean all persons who: (1) have instituted a proceeding before a court, arbitrator or governmental agency (a "Proceeding") in which relief has been demanded of FAB or FAC; (ii) have overtly manifested to FAB or FAC in writing an awareness of or intention to assert a claim against FAB or FAC on the basis of specified facts

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[2] The Court has determined that the use of a "claims bar" as suggested by the United States and the Court-Appointed Fiduciaries is unwarranted. Although this is by no means a standard corporate dissolution, there is no indication at this point that the unknown potential liabilities will cause any serious delay in the distribution of the assets to the victims (particularly in light of the known potential liabilities). Should there come a time when any of the entities involved herein determine that the absence of a bar has served to hinder the expeditious distribution of the assets, the Court will entertain the appropriate motion or act *sua sponte*.

or theories, including a claim for payment of a bona fide debt required by binding contract or law to be paid (collectively, "asserted claims"); or (iii) have been determined by the Boards of Directors of FAB and FAC to have claims or contingent claims that are possible of assertion against FAB or FAC ("unasserted or contingent claims"). Notwithstanding the foregoing, the Notice need not be given to any known claimant which has already instituted a Proceeding or which is a United States federal, state or municipal governmental entity which has or may have a claim for taxes against FAB or FAC.

3. In addition, the Trustee shall cause FAB and FAC each to publish notice of its liquidation under its Dissolution Plan and require that persons with claims against FAB or FAC present their claims in accordance with such notice (the "Publication Notice"). The Publication Notice shall be published once a week for three consecutive weeks in a newspaper of general circulation in each city in the United States where FAB or FAC or any of their subsidiaries or United States affiliates had operations at any time since January 1992, and in addition shall be published once a week for three consecutive weeks in *The Wall Street Journal* and any other publications of national circulation as the Trustee deems appropriate. The Publication Notice shall contain the same information contained in the Notice.

4. (a) The Notice and the Publication Notice shall state that, except for claims that are the subject of a Proceeding, written confirmation of the claim or a written description of the claim shall be delivered to FAB or FAC by a date specified, which date shall be 120 days from the first date of publication of the Publication Notice.

(b) The Notice shall state that, except for (i) claims admitted by FAB or FAC; and (ii) asserted claims that have been contested in writing by FAB, FAC or the

Trustee, the claim of any known claimant to whom Notice is provided shall be barred in accordance with the Virginia Act if the claimant does not (A) deliver written confirmation of the claim or a written description of the claim to FAB or FAC, as appropriate, by the date specified in the Notice; and (B) commence a Proceeding to enforce the claim within 90 days from the delivery of written confirmation of the claim or a written description of the claim to FAB or FAC. In addition, the Notice and Publication Notice shall state that all Proceedings brought as civil actions in the United States District Court for the District of Columbia shall be designated as related cases to *United States v. BCCI Holdings, et al.*, Criminal No. 91-0655 (JHG).

5. (a) As promptly as practicable following the expiration of the 120-day notice period specified in the Notice and the Publication Notice, the Trustee shall cause each of the Boards of Directors of FAB and FAC to deliver to the Trustee a list (the "Lists of Claims and Contingencies") of all (i) Proceedings against FAB or FAC, and (ii) asserted claims against FAB or FAC indicating, to the extent practicable, which of such claims are or will be contested by FAB or FAC. The Lists of Claims and Contingencies shall include as exhibits lists (the "Reserve Lists") which shall indicate, to the extent practicable, (A) all unasserted or contingent claims and which of such unasserted or contingent claims are or will be contested by FAB or FAC, (B) the good faith determination by the Boards of Directors of FAB and FAC, based upon such information as they shall deem appropriate, of the amount appropriate to pay, discharge or provide in full for, each such (i) Proceeding, contested asserted claim and contested unasserted or contingent claim if there shall be a "final disposition" adverse to FAB or FAC of such Proceeding or claim, and (ii) asserted claim and unasserted or contingent claim that is uncontested but not yet paid or payable in full, and

(C) an estimated amount for unknown claims and contingencies. For purposes of this Order, "final disposition" shall mean a final judgment or a final unconditional settlement dismissing the action or claim with prejudice, which judgment or settlement is not subject to further judicial review either by right of appeal or petition for certiorari. FAB and FAC will submit amended Lists of Claims and Contingencies and Reserve Lists on a quarterly basis or sooner if there are significant changes between submissions to add or delete Proceedings and claims (asserted or unasserted) or contingent claims and shall deliver such Lists, as amended, to the Trustee.

(b) As promptly as practicable following the expiration of the 120-day notice period, the Trustee shall prepare a List (the "Trustee Expense List"), in the form previously approved by the Court on June 17, 1994, estimating the amount adequate to cover his expenses through the termination of his duties under the Order Appointing Trustee, provided, however, that such estimates shall not be binding on the Trustee and shall be subject to adjustment from time to time.

(c) As promptly as practicable following the expiration of the 120-day notice period, the Trustee shall cause the Boards of Directors of FAB and FAC to deliver to the Trustee a List (the "FAB and FAC Expense and Indemnity List") in which the FAB Board shall estimate the amount adequate to cover all expenses of FAB and FAC through the final dissolution of FAB and FAC, including estimated expenses of prosecution and defense of Proceedings and contested claims in favor of and against FAB and FAC, and provisions for indemnification of current and former officers and directors of FAC, FAB and their affiliates, provided, however, that such estimates shall not be binding on the Trustee, FAB or FAC and shall be subject to adjustment from time to time.

6. Promptly following receipt of the Lists described in paragraphs 5(a) and 5(c) (and any amendment there-

to), the Trustee shall (a) file such Lists and the Trustee Expense List with the Court (the Reserve Lists and the FAB and FAC Expense and Indemnity List, and amendments thereto, together with any Trustee comments thereon, and the Trustee Expense List, all to be filed under seal), and (b) serve copies upon the Department of Justice, the Board of Governors of the Federal Reserve System, the Court-Appointed Fiduciaries and the District Attorney of New York County.

7. Promptly following the last to occur of (a) the final disposition of the action styled as *Hamid v. Price Waterhouse, et al.* (which asserts damages that exceed all proceeds of the sale of the FAC and FAB assets), including all claims consolidated therewith against FAB, FAC and all present or former directors, officers and corporate affiliates thereof, and (b) the filing by the Trustee of the Lists of Claims and Contingencies and Reserve Lists, the Trustee shall cause the Boards of Directors of FAB and FAC to establish accounts on their books, in the following order of priority:

(i) FAB shall establish a general account (the "Trustee Expense Account") in such amount as estimated by the Trustee as adequate to cover his expenses under the Order Appointing Trustee through the termination of this duties under the Order Appointing Trustee;

(ii) FAB shall establish one or more general accounts (the "FAB General Accounts") in which FAB shall provide (A) an amount that the Board of Directors of FAB determines to be adequate to cover all expenses of FAB and FAC through the final dissolution of FAC, including but not limited to estimated expenses of prosecution and defense of Proceedings and contested claims in favor of and against FAB and FAC, and provision for indemnification of current and former officers and directors

of FAC, FAB and their affiliates, and (B) $10 million, received by FAB and held separately pursuant to the Settlement Agreement dated February 25, 1994 among FAB, FAC, the Trustee, and Sheik Bin Mahfouz and the other parties thereto and filed with this Court (the "Mahfouz Settlement Agreement");

(iii) FAB shall establish a reserve account (the "FAB Claim Reserve Account") equal in amount to the total dollar amounts shown on FAB's Reserve List; and

(iv) FAC shall establish a reserve account (the "FAC Claim Reserve Account") equal in amount to the total dollar amounts shown on FAC's Reserve List.

The Trustee Expense Account, the FAB General Accounts and the FAB Claim Reserve Account are referred to collectively as the "FAB Accounts".

8. Promptly upon the establishment of the accounts described in paragraph 7, the Trustee shall cause the Board of Directors of FAB to transfer to FAC an amount, in cash or readily marketable securities, equal to the excess of (i) cash and the market value of such securities then held by FAB over (ii) the aggregate of the amounts in the FAB Accounts. The Trustee shall cause the Board of Directors of FAC to transfer to the Trustee, immediately following the transfer to FAC from FAB, an amount, in cash or readily marketable securities, equal to the excess of (x) cash and the market value of such securities then held by FAC over the total of (y) the amount of the FAC Claim Reserve Account, and (z) any applicable income and withholding taxes.

9. (a) Simultaneously with the transfer from FAC to the Trustee, the Trustee shall establish or cause to be established on the books of the Trustee one or more accounts, in the following order of priority, as follows:

(i) One or more CCAI/CCAH Operating Accounts in such amount as the Trustee shall be advised (in a CCAI/CCAH Expense List provided by CCAI and CCAH) has been estimated to be adequate to cover all expenses of CCAI and CCAH through the final dissolution of CCAI and CCAH, including but not limited to estimated expenses of prosecution and defense of Proceedings and contested claims in favor of and against CCAI and CCAH;

(ii) A CCAI Claim Reserve Account in such amount as the Trustee shall be advised (in a CCAI Reserve List provided by CCAI) has been estimated to be adequate to pay, discharge or provide in full for each Proceeding, claim or contingent claim against CCAI, including claims for payment of bona fide debts as are required by binding contract or law to be paid, if there shall be a final disposition adverse to CCAI of each such Proceeding, claim and contingent claim that is contested by CCAI or the Trustee;

(iii) A CCAH Reserve Account in such amount as the Trustee shall be advised (in a CCAH Reserve List provided by CCAH) has been estimated to be adequate to pay, discharge or provide in full for each claim or contingent claim against CCAH, including claims for payment of bona fide debts as are required by binding contract or law to be paid, if there shall be a final disposition adverse to CCAH of each Proceeding, claim and contingent claim that is contested by CCAH or the Trustee; and

(iv) A Suspense Account (the "Trustee Suspense Account") equal in amount to the excess of (A) the assets transferred by FAC to the Trustee over (B) the aggregate amount of the CCAI/CCAH Operat-

ing Accounts, the CCAI Claim Reserve Account and the CCAH Claim Reserve Account.

The CCAI/CCAH Operating Accounts, the CCAI Claim Reserve Account and the CCAH Claim Reserve Account are referred to collectively as the "CCAI/CCAH Accounts."

(b) The Trustee shall file the "CCAI/CCAH Expense List" and the "CCAI and CCAH Reserve Lists" with this Court under seal and serve copies upon the United States, the Board of Governors of the Federal Reserve System, the Court-Appointed Fiduciaries and the District Attorney of New York County. Amounts received from time to time by the Trustee from any source for the account of CCAI or CCAH shall be credited to a CCAI/CCAH Account, if needed, or to the Trustee Suspense Account. The Trustee may delegate management of the CCAI/CCAH Accounts to FAB or a trust company having assets exceeding $10 billion.

(c) Decisions regarding the payment or non-payment by FAC or CCAI of intercorporate debt to CCAH shall be made in consultation with the Federal Reserve Bank of New York ("the New York Fed"), as principal shareholder of CCAH. If payment of such intercorporate debt is determined to be prudent or necessary to comply with applicable law or the purposes of this Order, any payment for the benefit of CCAH shall be made to a CCAH Account designated by the Trustee, and the New York Fed, as principal shareholder of CCAH, shall cause CCAH to provide any necessary and appropriate releases to FAC or CCAI, as the case may be.

10. Promptly following the establishment of the accounts described in Paragraph 9, the Trustee shall apply to this Court for authority to transfer to the United States Marshal's Service from the Trustee Suspense Account an amount, in cash or readily marketable securities, equal to 61.156% of the amount in the Trustee Suspense Account,

in accordance with the Order of Forfeiture entered by this Court on December 21, 1994, less any applicable income and withholding taxes.

11. In accordance with the Abu Dhabi Settlement Agreement,[3] immediately after the transfer referred to in Paragraph 10, the Trustee shall transfer (i) to the New York Fed, for the benefit of the Court-Appointed Fiduciaries, from the Trustee Suspense Account an amount, in cash or readily marketable securities, equal to 37.601% of the amount in the Trustee Suspense Account immediately before the transfer referred to in Paragraph 10, less $40 million and less any applicable income and withholding taxes; and (ii) to FAB, as a contribution to capital, an amount, in cash or readily marketable securities, equal to $40 million.

12. In accordance with the Order Appointing Trustee, promptly following the transfers provided in Paragraphs 10 and 11 above, the Trustee shall apply to this Court for authority to transfer the amount remaining in the Trustee Suspense Account to the persons, determined by this Court to be entitled thereto; *provided* that if the right of any person other than the United States or the New York Fed to receive a portion of the Trustee Suspense Account is contested in, or as a result of, any Proceeding pending or claim asserted at the time the Trustee makes a transfer to the United States and the New York Fed, the amount that otherwise would be transferred to such person shall be transferred by the Trustee to the Court Registry Investment System, or as otherwise directed by the Court, pending the outcome of such Proceeding or resolution of such contested claim.

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[3] The Settlement Agreement dated January 21, 1994 among FAB, FAC, the Trustee, the Abu Dhabi Parties (as defined therein) and the other parties thereto provided that the New York Fed would return to FAC $50 million of the amount transferred to it on account of its holdings of CCAH stock, less the $10 million received under the Mahfouz Settlement Agreement (*see* Paragraph 7(ii)).

13. On a quarterly basis, the Trustee shall (a) review the Trustee Expense Account, (b) cause the Board of Directors of FAB and FAC to review their Accounts and their respective Lists of Claims and Contingencies, Reserve Lists, and FAB and FAC Expense and Indemnity List and make such adjustments to their Accounts as they deem appropriate, in consultation with the Trustee, and (c) request CCAI and CCAH to review the CCAI/CCAH Accounts, the CCAI/CCAH Expense List and the CCAI and CCAH Reserve Lists and propose amendments to such Accounts as they deem appropriate. Following such review the Trustee shall review the status of all of the Accounts with the Department of Justice, the Board of Governors of the Federal Reserve System, the Court-Appointed Fiduciaries, and the District Attorney of New York County, and following such review, shall (a) cause FAB to transfer to FAC an amount, in cash or readily marketable securities, equal to the excess of (i) cash and the market value of such securities then held by FAB over (ii) the aggregate of the amounts then reflected in the FAB Accounts, (b) cause FAC to transfer to the Trustee, immediately following the transfer from FAB, an amount, in cash or readily marketable securities, equal to the excess of (x) cash and the market value of such securities then held by FAC, over the total of (y) the total dollar amounts shown on the then current FAC Reserve List, and (z) any applicable income and withholding taxes. The Trustee also shall reallocate the amounts then in the CCAI/CCAH Accounts and the amounts received from FAC among the CCAI/CCAH Accounts and the Trustee Suspense Account based on the CCAI and CCAH review. If any quarterly review by FAB or FAC reflects additional amounts required by FAB or FAC, the Trustee shall transfer to FAB or FAC from the CCAH Claim Reserve Account, the CCAI Claim Reserve Account, or the CCAI/CCAH Operating Accounts, in that order of priority, the lesser of the amount of additional funds required or the aggregate amounts then reflected in the CCAI/CCAH Accounts.

14. The Trustee shall, on a quarterly basis coinciding with his regular reports to this Court, transfer the balance in the Trustee Suspense Account (i) first to the New York Fed until it shall have received up to $50 million [4] and (ii) thereafter to the United States Marshal's Service, the New York Fed, and the other persons entitled thereto, in accordance with their interests as determined by Order of this Court (subject to the proviso contained in Paragraph 12), less in each case applicable income and withholding taxes.

15. At such time as all claims, contingent claims, obligations, liabilities and expenses of FAB, FAC, CCAI and CCAH of any nature have been resolved, paid or discharged in full, the Trustee shall cause FAB and FAC to transfer to the Trustee all assets then held by FAB and FAC. Immediately thereafter the Trustee shall retain an amount estimated by him as adequate to cover his remaining expenses and shall transfer the balance in the CCAI/CCAH Accounts and the Trustee Suspense Account (a) first to the New York Fed to the extent of any amounts then due to it pursuant to clause (i) of Paragraph 14 above, and (b) thereafter, to the extent of amounts remaining in such Accounts, to the United States Marshal's Service, the New York Fed and the other persons entitled thereto, in accordance with their interests as determined by Order of this Court (subject to the proviso contained in Paragraph 12), less in each case any applicable income and withholding taxes.

16. At such time as all expenses of the Trustee have been paid in full, the Trustee shall transfer all assets then held by the Trustee to the United States Marshal's Service, the New York Fed and the other persons entitled thereto,

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[4] The Transfer first to the New York Fed is intended to reimburse the New York Fed for the amounts that would have been earlier transferred to it pursuant to Paragraph 11 of this Order but for provisions contained in the Abu Dhabi Settlement Agreement. *See* Paragraph 11 above and the note thereto.

in accordance with their interests as determined by Order of this Court, less in each case any applicable income and withholding taxes.

IT IS SO ORDERED.

December 21, 1994

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal Number 91-0655 (JHG)
Defendants 01-04

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, and INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

NOTICE REGARDING BENEFICIAL OWNERSHIP OF CCAH SHARES

This notice responds to the directive in the Court Order Appointing Trustee (dated June 23, 1992, as amended on August 19, 1993) issued in the above-captioned case ("Trust Order"). The Trust Order directed the United States and the Federal Reserve to determine "what portion of [First American Corporation] stock BCCI owns and is subject to forfeiture," and to provide that determination to the Court. This notice is intended to comply with the Court's direction.

BCCI's beneficial ownership of FAC stock or assets, or the proceeds thereof, derives from its beneficial interest in the equity of FAC's top-tier parent company, Credit and Commerce American Holdings, N.V. ("CCAH").[1]

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[1] CCAH is the sole shareholder of Credit and Commerce American Investment, B.V. ("CCAI"), which is, in turn, the sole shareholder of FAC.

The beneficial interest of BCCI in the stock of CCAH results from the fact that several individuals and companies acted as nominees for BCCI. These nominees held legal title to the shares of CCAH, but held those shares on behalf of BCCI.

As a result of continuing investigations conducted by staffs of the Federal Reserve, the Office of the District Attorney of New York County, and the United States Department of Justice, as well as settlement agreements reached in matters related to BCCI, we have been able to conclude the following with regard to shares of CCAH. The evidence we have obtained indicates that the shareholders listed on Exhibit A acted as BCCI nominees, and the CCAH shares registered in their names are beneficially owned by BCCI and are subject to forfeiture. The shares listed on Exhibit B are beneficially owned by BCCI and the listed shareholders have voluntarily relinquished the CCAH shares registered in their names to the Department of Justice for the purpose of forfeiture as a result of settlement agreements. The shares identified on Exhibits A and B total 176,815, or 61.156 percent, of the 289,120 outstanding shares of CCAH. In addition, 81,876 CCAH shares, or 28.319 percent of those outstanding, formerly owned by persons or entities connected with the government of Abu Dhabi have been transferred to the Federal Reserve Bank of New York as agent for the Board of Governors of the Federal Reserve System pursuant to an agreement among the Abu Dhabi parties, the Board, the District Attorney's Office and the Department of Justice (the "Geneva Agreement"). The remaining 32,429 shares, or 10.938 percent, are registered in the names set forth on Exhibit C.[2]

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[2] With respect to the 28,837 shares held of record by Burford Investments Ltd listed on Exhibit C, the Abu Dhabi parties have assigned any rights they have in such shares to the Federal Reserve Bank of New York pursuant to the Geneva Agreement, and

Respectfully submitted,

/s/ J. Virgil Mattingly
J. VIRGIL MATTINGLY
General Counsel
Board of Governors of the
Federal Reserve System

ROBERT D. SHARP
Acting Director

STEFAN D. CASSELLA
Acting Deputy Director

By: /s/ Stefan Cassella
ROBERT C. DALTON
Trial Attorney
Asset Forfeiture Office
P.O. Box 27322
Central Station
Washington, D.C. 20038
(202)-514-1263

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we anticipate that the right to the proceeds of these shares will ultimately be held by that Reserve Bank as agent for the Board of Governors pursuant to agreements.

EXHIBIT A

BCCI'S EQUITY INTEREST IN CCAH HELD THROUGH NOMINEES

Nominee Shareholder	Number of Shares Held	Percentage
Faisal Saud Al Fulaij	26,439	9.14
Mohammad M. Hammoud	18,200	6.29
A. R. Khalil	13,250	4.58
TOTAL	57,889	20.022

EXHIBIT B

SHARES BENEFICIALLY OWNED BY BCCI SUBJECT TO VOLUNTARY TRANSFER BY REGISTERED SHAREHOLDERS

Registered Shareholder	Number of Shares Held	Percentage
Kamal Adham	36,493	12.62
Adham Corporation	7,410	2.56
Mashriq Holding Company	27,986	9.68
Humaid Bin Rashid Al Naomi	16,824	5.82
A.M. Shorafa	28,748	9.94
Sayed Jawhary	1,465	0.51
TOTAL	118,926	41.134

EXHIBIT C

REGISTERED SHAREHOLDERS OF CCAH SHARES

Shareholder	Number of Shares Held	Percentage
Burford Investments Ltd	28,837	9.282
Clark M. Clifford	2,395	0.828
Robert A. Altman	1,197	0.414
TOTAL	32,429	11.216

July 11, 1994